SENT "HOME" WITH NOTHING:

THE DEPORTATION OF JAMAICANS WITH MENTAL DISABILITIES

A PROJECT OF THE
GEORGETOWN LAW **HUMAN RIGHTS INSTITUTE FACT-FINDING MISSION**

GEORGETOWN LAW **HUMAN RIGHTS INSTITUTE**

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EXECUTIVE SUMMARY

"[Deported persons] should arrive with dignity . . . and their reception should not worsen their humiliation."

Dr. Bernard Headley, Professor of Criminology at the University of the West Indies at Mona

Deportation from the United States involves much more than a plane ride "home." Particularly for deported persons with mental disabilities, it can mean a harrowing journey to a country one does not remember, a culture that stigmatizes deported persons and persons with mental disabilities, and a society filled with obstacles to accessing adequate medical care, housing, and employment.

This report—based on interviews with deported persons with and without mental disabilities, their family members, mental health professionals, social service providers, academics, government officials, and human rights advocates—identifies and analyzes the impact of U.S. deportation policies and practices on mentally disabled persons after they are ordered removed and are deported from the United States. The findings are presented within a human rights framework, which informs the conclusion that the United States is deporting particularly vulnerable people, such as those with mental disabilities, to places where their human rights are at risk.

Georgetown Human Rights Action, in partnership with the Georgetown Law Human Rights Institute, proposed and developed this fact-finding mission. A team of nine Georgetown Law students and two faculty members conducted the fact-finding and developed this report through months of research. The project sought to identify the major obstacles to reintegration for deported persons with mental disabilities in Jamaica, including possible human rights violations, and encourages the United States to take responsibility for and affirmatively address our role in the marginalization of this vulnerable population. While the interviews conducted for the report focused on the experiences of deported Jamaicans, the included recommendations address the challenges faced by all persons with mental disabilities deported from the United States.

This report examines U.S. deportation policies and practices, describing in detail the process of returning to Kingston and the reintegration issues deported persons with mental disabilities face immediately upon arrival. It addresses these barriers to reintegration, as well as how these individuals are often prevented from enjoying their human rights to health, housing, work, and the freedom from state-sanctioned discrimination, violence, and abuse. Finally, to demonstrate alternatives to the status quo, the report describes the British reintegration programs in Jamaica and the U.S. reintegration programs that exist in other Caribbean countries and El Salvador.

The following findings are addressed in detail in the report:

- The United States does not communicate vital information to Jamaica about persons with mental disabilities in advance of their deportation, which hinders access to mental health treatment, personal property, and travel documents during detention, staging, and deportation.

- The United States fails to inform persons in U.S. detention about the challenges they are likely to face in Jamaica, and the resources available to circumvent those challenges.

- Family support promotes the wellbeing of persons with mental disabilities in detention and after deportation. U.S. detention policies and practices impede effective communication between deported persons with mental disabilities and family in the United States and Jamaica prior to deportation.

- Access to medication, medical records, and medical treatment is challenging for deported persons with mental disabilities due to limited physical and economic accessibility, low standards of care, and stigma, among other barriers.

- Due to low socioeconomic status, stigma, and barriers to receiving family support, deported persons with mental disabilities are at high risk of homelessness and experience great difficulties in reintegration.

- Deported persons with mental disabilities face high rates of unemployment and exploitation due to the prevalence of stigma and the lack of adequate skills certification and training opportunities in Jamaica.

- Identification documents are crucial to reintegration. The United States fails to supply persons in detention with adequate identification or the means to obtain it. The cost and difficulty of authenticating identity without such documentation hampers access to housing and employment.

In light of these findings, our recommendations follow in Part 5 this report, with steps that the United States can take to safeguard the human rights of deported persons with mental disabilities.

INTRODUCTION

As a member of a prominent and powerful Jamaican family, John[1] likely had access to a lifestyle that few other Jamaicans would ever experience. Unforeseeably, he would find himself practically forgotten by those who were closest to him and shunned by those who once wished they were in his shoes. Born and raised in Jamaica, John relocated to the United States with several of his siblings at the age of fourteen or fifteen. Approximately seven years ago, while living in New York, John received mental health treatment and was eventually diagnosed with schizophrenia, a mental illness characterized by such symptoms as hallucinations, delusions, inappropriate or flattened affect, and disorganized thoughts, speech, and/or behavior.

The story of John's unintended return to Jamaica began in New York, where he was arrested and convicted of indecent exposure, a non-violent misdemeanor. John was incarcerated at Rikers Island prison facility in New York, and later was transferred to a detention facility in Texas. In an effort to remain in the United States, he filed for cancellation of removal and attempted to find counsel who could guide him through the daunting immigration proceedings. Although the presiding judge reportedly stated that he would refer John to an immigration attorney, John never received any legal assistance or representation. As a result, John was unable to adequately advocate for himself in court, and the immigration judge ordered him removed from the United States. At some point after the ruling, John was placed in a truck with other Jamaicans detainees and transferred to a pre-deportation staging center in Louisiana.

On the day of his deportation, John was shackled and placed on a chartered flight to Kingston. After being processed at the Central Police Station in Jamaica, the Jamaican authorities permitted him to leave and he subsequently took a bus to the neighborhood in which he was raised. Although it had been a number of years since John had been to Jamaica, a former neighbor recognized him as he wandered through the community. The neighbor contacted Dr. Wendel Abel, a professor of psychiatry who often assists and treats mentally disabled deported persons. With no family member willing to

1 Interview with John in Kingston, Jam. (Jan. 11, 2011). In order to ensure the confidentiality of those who participated in our research for the report, all names of deported persons and their family members appear as pseudonyms. Certain other individuals working in their professional capacities provided information on condition of anonymity; in such cases, information is attributed to either the sector or the position in which they work at the named agency.

take John in, Dr. Abel took him to a community group home, a facility that offers housing to deported persons on a somewhat short-term basis. His transition to living at a group home was not entirely smooth, as reflected by the fact that he ran away once, only to return three days later.

Other than his passport, John does not have any identification documents. He does not have his birth certificate, a document that is necessary in Jamaica to access social services or apply for other forms of identification, but which is also quite expensive to acquire. Moreover, John was not aware that he would need a tax identification number, which is necessary for employment in Jamaica, but requires photo identification or a birth certificate to obtain. His immediate plans are to "hustle" so as to earn enough money to apply for a copy of his birth certificate and ultimately a job, the latter of which he desperately wants so that he can "keep his confidence."

Although many of his family members are now aware that John resides in a hostel run by Community Group Homes, they were not informed ahead of time that he was being deported from the United States or notified as to when he would arrive in Kingston. Unfortunately, it is not clear that he would have been well received even if they had been made aware of his return. Given John's status as a deported person and someone who suffers from a mental illness, he is viewed as a source of embarrassment by his family. Aside from occasional financial assistance, their support has not been forthcoming. John's reception by the Jamaican community has not been much different, as evidenced by his perception that others often speak to him "in a degrading manner." This lack of acceptance can be directly traced to a deeply engrained stigma against non-mainstream individuals within Jamaican culture—one that represents an exclusionist mentality regarding both deported persons and those who suffer from mental illness.

U.S. deportation policies and practices affect hundreds of thousands of people each year. In fiscal year 2010 alone, the U.S. Department of Homeland Security (DHS) deported 392,862 individuals, permanently altering the lives of both the deported persons and their families.[2] Of those in detention prior to deportation, an estimated fifteen percent are mentally disabled.[3] Unfortunately, for persons with mental disabilities, legal and medical safeguards in detention and upon release are woefully insufficient.[4]

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2 Julia Preston, ***Deportations From U.S. Hit a Record High***, N.Y. Times, Oct. 7, 2010, at A21.

3 Dana Priest & Amy Goldstein, ***Suicides Point to Gaps in Treatment***, Wash. Post, May 13, 2008, at A1, ***available at*** http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_day3_printer.html (citing to confidential memos exchanged between Immigration and Health Services Health Service Corps, now renamed Immigration and Customs Enforcement Health Service Corps).

4 ***See*** Badour et al., Texas Appleseed, Justice for Immigration's Hidden Population: Protecting the Rights of Persons with Mental Disabilities in the Immigration Court and Detention System (2010) [hereinafter Texas Appleseed Report]; Human Rights Watch & American Civil Liberties Union, Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System (2010) [hereinafter Human Rights Watch Report].

In recent months, information has been brought to light concerning inadequacies in the U.S. immigration and detention system with respect to mentally disabled persons. Importantly, reports have documented the lack of protections for persons with mental disabilities in immigration detention and during deportation proceedings,[5] and have briefly addressed the lack of adherence to, and often the notable absence of, physical and medical safeguards for the mentally disabled upon release.[6] However, beyond these reports, there is little information concerning what happens to mentally disabled individuals after they are ordered to be deported. This report seeks to fill that gap.

Specifically, this report identifies and analyzes the impact of U.S. deportation policies and practices on the human rights and well-being of mentally disabled persons after they are ordered deported from the United States. In order to contextualize the impact deportation has on persons with mental disabilities, we chose to focus our research on one country: Jamaica.

We chose Jamaica for a number of reasons. In the beginning of our research process, we received anecdotal evidence from several immigration attorneys suggesting that Jamaica receives a relatively high percentage of deported persons suffering from mental disabilities compared to other receiving countries. In addition, stigma against deported persons is deeply ingrained in Jamaican society, which raised the suspicion that stigma would compound the issues mentally disabled deported persons already face upon return.[7] Further, our initial research indicated that mentally disabled persons in Jamaica suffered from a lack of access to adequate mental health care.[8] Finally, we learned that the United States deports a significant number of Jamaicans each year. From 2002 to 2009, more than 13,000 Jamaicans were deported from the United States;[9] 1,620 Jamaicans were deported in 2009 alone.[10] The Jamaican Embassy in the United States has

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5 The Texas Appleseed Report detailed the dearth of health care offered in ICE detention facilities, the near absence of a system for maintaining medical records, the inadequate accommodation of mental disabilities in immigration proceedings, and the inadequate provision of medical care during the release of deported persons. Texas Appleseed Report, *supra* note 4. The Human Rights Watch Report documented the inattention to mental disabilities during arrest and detention, the arbitrary detention resulting from an immigration system ill-equipped to address issues of mental health, the violations of due process that arise from inadequate representation in deportation proceedings, and the subsequent frequency of deportation that arose from the lack of legal safeguards. Human Rights Watch Report, *supra* note 4.

6 *See* Texas Appleseed Report, *supra* note 4; Human Rights Watch Report, *supra* note 4.

7 *See, e.g.*, Gibson et al., *Internalizing stigma associated with mental illness: findings from a general population survey in Jamaica*, 23(1) Pan Am. J. Pub. Health 26, 27 (2008).

8 *See generally* World Health Org., Assessment Instrument for Mental Health Systems: Report on Mental Health System in Jamaica 30-32 (2009).

9 Daraine Luton, *Deportee Alarm – More Than 6,000 Jamaicans In Danger of Being Booted From US*, Jam. Gleaner, June 14, 2010, *available at* http://jamaica-gleaner.com/gleaner/20100614/lead/lead2.html.

10 Removals and Returns by Country, Am. Immigr. Law. Ass'n (Mar. 9, 2010), http://www.cam.aila.org/content/default.aspx?docid=31475.

indicated that there are more than 6,000 Jamaicans currently in U.S. detention facilities facing deportation.[11] It is unknown precisely how many of those deported to Jamaica have mental disabilities, but based on estimates by the U.S. Department of Homeland Security's Division of Immigration Health Services that fifteen percent of those in immigration detention have a mental disability, it can reasonably be assumed that a comparable percentage of deported Jamaicans are mentally disabled.[12] Despite these figures, there is currently no memorandum of understanding (MOU) between the United States and Jamaica concerning the deportation process generally; nor is there a formal agreement to specifically address the unique needs of mentally disabled persons who are deported from the United States.[13]

To conduct research for this report, a team of nine Georgetown Law students and two faculty members traveled to Kingston and Montego Bay, Jamaica, in January 2011 to meet with relevant stakeholders. While there, the research team interviewed Jamaicans with and without mental disabilities who had been deported from the United States, their family members, mental health professionals, social service providers, academics, Jamaican and British government officials, representatives of international organizations, and human rights advocates. Both before and after the trip, the research team consulted with civil society members and academics concerning the development and substance of this report.[14]

The report utilizes a human rights framework to examine and articulate the impact deportation has on individual lives in Jamaica. By using such a framework, deported persons' seemingly disparate and individualized experiences can be more readily identified as systemic human rights abuses that governments have an obligation to address and correct.[15] Examining individuals' experiences through a human rights lens, we found deficiencies throughout the deportation and reintegration process.

Our findings led us to conclude that the United States is deporting particularly vulnerable people, namely those with mental disabilities, to environments in which their human rights are at risk. We found that persons with mental disabilities who are deported to Jamaica face practically insurmountable barriers to reintegration. Upon their arrival, many deported persons with

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11 Luton, ***supra*** note 9.

12 Priest & Goldstein, ***supra*** note 3 (according to confidential memos exchanged between the Division of Immigration Health Services, now renamed the Immigration and Customs Enforcement Health Service Corps).

13 Interview with Jam. Passport, Immigration and Citizenship Agency official, in Kingston, Jam. (Jan. 14, 2011).

14 A full account of the methodology used and individuals and organizations interviewed can be found ***infra*** Appendix A.

15 Ana Elena Obando, ***How Effective Is a Human Rights Framework In Addressing Gender-based Violence?***, Ass'n for Women's Rights in Dev. (2008), ***available at*** http://www.awid.org/eng/Library/How-Effective-is-a-Human-Rights-framework-in-addressing-Gender-based-Violence.

mental disabilities become homeless, are victims of discriminatory employment practices, are not provided with adequate medical care, and may be subject to exploitation and violence. Although some of the issues mentally disabled deported persons face are unique to Jamaica, many are issues that mentally disabled individuals would likely face upon return to any comparable country that lacks adequate access to medicine, mental health care services, and housing, and that suffers from similarly high rates of unemployment and crime.

Life in Jamaica is particularly challenging for the most vulnerable, including persons with mental disabilities, for a number of reasons. Jamaica has one of the highest rates of violent crime in the world. In 2010 alone, there were 1,428 reported murders in a country of only 2.8 million people.[16] Most victims of violent crime live in "deprived and excluded inner-city areas where unemployment rates are high."[17] Some of these inner-city areas have been ignored by the state for years and are run by gangs that control access to the few social services that are available.[18] As a result, individuals who live in these communities are "denied access to effective state protection and to the services which should provide for their basic economic and social rights."[19] Jamaica also has one of the highest rates of police killings in the Americas.[20] In 2010, 309 individuals were killed by the police, many in situations involving an excessive use of force or amounting to extra-judicial killings.[21] Jamaica's serious and growing crime problem also hampers its economic growth, and contributes to high levels of unemployment and underemployment.[22] At the same time, the high unemployment rate exacerbates the country's crime problem, including gang violence fueled by the drug trade.[23]

Stigma and discrimination also contribute to the challenges that deported persons with mental disabilities face in Jamaica. Due to the relatively high number of deportations to Jamaica that result from criminal convictions (mainly for petty or nonviolent offenses),[24] there is a widespread

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16 Amnesty Int'l, Public Security Reforms and Human Rights in Jamaica 5-6 (2009); *see also* Mark Wignall, *Why has Jamaica's crime rate fallen?*, Jam. Observer, Feb. 3, 2011, *available at* http://www.jamaicaobserver.com/columns/Why-has-Jamaica-s-crime-rate-fallen_8329778.

17 Amnesty Int'l, *supra* note 16, at 6.

18 *Id.*

19 *Id.*

20 Amnesty Int'l, Jamaica: 'Let them kill each other': Public security in Jamaica's inner cities 5 (2008).

21 Laura Redpath, *JFJ Stunned at Police Killings*, Jam. Gleaner, Jan. 15, 2011, *available at* http://jamaica-gleaner.com/gleaner/20110115/news/news7.html. This number does not include the seventy-three civilians killed during the joint police military operation to arrest Dudus Coke. *Id.*

22 The World Factbook – Jamaica, CIA.gov, https://www.cia.gov/library/publications/the-world-factbook/geos/jm.html (last visited Mar. 23, 2011).

23 *Id.*

24 Removals and Returns by Country, *supra* note 10.

assumption that all deported persons have committed a serious crime abroad and thus present a security threat. This stigma remains in spite of little hard evidence that deported persons commit crimes once returned to Jamaica.[25] Moreover, persons with mental disabilities are widely perceived as unmanageable and violent.[26] Individuals who have a mental disability *and* who have been deported therefore face increased stigma due to their dual status.[27] Additionally, there is no legal recourse for persons who have been discriminated against because of their mental disability or status as a deported person, further marginalizing those individuals who fall into these categories.[28] As a result of stigma, discrimination, and a lack of legal recourse to ameliorate their combined effects, it is particularly challenging for mentally disabled deported persons to obtain employment, find adequate shelter, and even maintain personal safety.

Part 1 of this report provides an examination of U.S. deportation policies and practices, as well as the process of returning to Kingston and the issues deported persons face immediately upon arrival. In Part 2, the report addresses the barriers to reintegration mentally disabled deported persons face, and how they are prevented from enjoying their human rights to housing, work, health, and to be free from state-sanctioned discrimination, violence, and abuse. Part 3 describes the British reintegration programs in Jamaica and U.S. reintegration programs that exist in other Caribbean states and in El Salvador. Part 4 concludes the report, followed by Part 5, which offers a set of recommendations to remedy the obstacles to reintegration identified in the report.

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25 Bernard Headley, with Michael D. Gordan & Andrew MacIntosh, Deported Volume 1: Entry and Exit Findings Jamaicans Returned Home From the U.S. Between 1997 and 2003, at 5-7 (2005).

26 Interview with Nurse Joy Crooks, Adm'r, Comm. for the Upliftment of the Mentally Ill, in Montego Bay, Jam. (Jan. 11, 2011).

27 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., in Kingston, Jam. (Jan. 11, 2011).

28 Interview with Dr. J. Carolyn Gomes, Dir., Jamaicans for Justice, in Kingston, Jam. (Jan. 13, 2011).

FOCUS Explanation of Terminology

Mental Disability: For the purposes of this report, the term "mental disability" includes mental illnesses, learning disabilities, and intellectual disabilities. The term is intended to cover the full spectrum of severity, ranging from minor to severe impairment. During our interviews, when a deported person identified his or her mental disability, we relied on the statement of the individual and did not seek independent medical verification. If it was unclear whether someone had a mental disability, we did not identify the individual as mentally disabled in our report.

"Madness" versus "Mental Illness" in Jamaica: "Madness" is a pejorative term commonly used in Jamaica that is "frequently, but not always, reserved for those individuals exhibiting violent behavior and/or homelessness, often combined with a 'poor' or 'dirty' outward physical appearance," and whose condition is considered permanent and pervasive.[29] The term may also be used to describe a person who is perceived as outraged, unmanageable, lacking self-control, very threatening, and/or psychotic.[30] In contrast, Jamaicans apply the term "mental illness" to conditions perceived as milder.[31]

Deportation: For the purposes of this report, "deportation" is defined as the act or instance of removing a person to another country, especially the expulsion or transfer of an alien from a country.[32] Although "removal" is the technical term used under the U.S. Immigration and Nationality Act (INA)[33] to describe the act of removing a person to another country, "deportation" is more frequently used in common parlance and will therefore be used in this report. However, when discussing technical immigration court proceedings, the term "removal" will be used.

29 Carlotta M. Arthur et al., *"Mad, Sick, Head Nuh Good": Mental Illness Stigma in Jamaican Communities,* 47(2) Transcultural Psychiatry 252, 264 (2010).

30 Interview with Nurse Joy Crooks, Adm'r, Comm. for the Upliftment of the Mentally Ill, *supra* note 26.

31 Arthur et al., *supra* note 29, at 264-65.

32 Black's Law Dictionary (9th ed. 2009).

33 8 U.S.C. § 1231 (2010).

HUMAN RIGHTS FRAMEWORK

"Jamaica is in serious breach of the right of the mentally ill to appropriate health and appropriate services based on their disability."[34]

All people, including deported persons, have fundamental human rights by virtue of their humanity.[35] The principle of non-discrimination requires all people to be treated without discrimination on the basis of nationality, immigration status, criminal history or other distinguishing factors.[36]As described throughout the report, international human rights law recognizes a right to the highest attainable standard of health; a right to adequate housing; a right to work; a right to be free from exploitation, violence, and abuse; a prohibition against cruel, inhuman or degrading treatment or punishment; and a right not to be returned to a state where one's life or freedom would be threatened (*non-refoulement*). Although Jamaica bears the primary responsibility for respecting, protecting, and fulfilling the rights of its citizens, the United States must take measures to avoid deporting people to places where they may face serious harm.

The rights detailed in this report are articulated in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on

34 Kimone Thompson, ***Mental Health Shame***, Jam. Observer, Feb. 6, 2011, ***available at*** http://www.jamaicaobserver.com/news/Mental-health-shame_8337363.

35 Universal Declaration of Human Rights, art. 2(1), G.A. Res. 217 (III) A, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

36 Amnesty Int'l, Living in the Shadows: A Primer on the Human Rights of Migrants 19 (2006). "The principle of non-discrimination does not mean that migrants have exactly the same entitlements as nationals." For example, "the ICERD specifically allows governments to make 'distinctions, exclusions, restrictions or preferences' between citizens and non-citizens (Article1(2)). . . . However, the principle of non-discrimination means that any differences in the treatment meted out to migrants must conform to international law—they must not breach the migrants' internationally recognized human rights." ***Id.***

the Rights of Persons with Disabilities (CRPD), and the 1951 United Nations Refugee Convention and 1967 Protocol. Although the UDHR is not legally binding on states, many international law scholars believe some of its provisions have taken on the status of customary international law.[37] The other treaties are legally binding on States Parties.[38]

States that have ratified these treaties have an obligation under international law to respect, protect, and fulfill the enumerated rights.[39] The obligation to respect requires that States must not interfere with or curtail the enjoyment of human rights.[40] The obligation to protect requires States to take measures to prevent third parties from abusing individuals' human rights.[41] The obligation to fulfill means that States must take actions to facilitate, provide, and promote the enjoyment of basic human rights.[42] While States are allowed to progressively achieve the realization of economic, social, and cultural rights, they must immediately meet certain core obligations to ensure the satisfaction of the minimum essential levels of each of the rights contained in these treaties.[43]

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37 Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law,* 25 Ga. J. Int'l & Comp. L. 287, 289 (1995/1996); *see also* Richard B. Lillich et al., *International Human Rights: Problems of Law, Policy, and Practice* 152 (4th ed. 2006) (Customary international law is another principle source of international law outside of treaties; a norm of customary international law emerges when "a preponderance of states from different regions of the world converge on a common understanding of the norm's content and expect future behavior to conform to the norm.").

38 States may choose to sign and/or ratify a treaty; however, signatories to the treaties are still obligated to act in good faith "not to defeat the object and purpose" of the treaty in question. Vienna Convention on the Law of Treaties, art. 18, *opened for signature* May 23, 1960, 1155 U.N.T.S. 331.

39 *International Human Rights Law*, United Nations Office of the High Comm'r for Human Rights, http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx (last visited Mar. 23, 2011).

40 *Id.*

41 *Id.*

42 *Id.*; *see also* U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14, ¶ 17, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter General Comment No. 14].

43 U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, The nature of States parties' obligations (Art. 2, par.1), General Comment No. 3, U.N. Doc. E/1991/23 (Dec. 14, 1990).

TABLE OF ACRONYMS

AVRIM	Assisted Voluntary Return of Irregular Migrants
BIA	U.S. Board of Immigration Appeals
CARICOM	Caribbean Community
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP	U.S. Customs and Border Protection
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CRPD	Convention on the Rights of Persons with Disabilities
CUMI	Committee for the Upliftment of the Mentally Ill
DHS	U.S. Department of Homeland Security
DOJ	U.S. Department of Justice
EOIR	U.S. Executive Office of Immigration Review
ERO	U.S. Enforcement and Removal Operations
FURI	Family Unification and Resettlement Initiative
HEART	Human Employment and Resource Training Trust
ICCPR	International Covenant on Civil and Political Rights
ICE	U.S. Immigration and Customs Enforcement
ICESCR	International Covenant on Economic, Social, and Cultural Rights
INA	U.S. Immigration and Nationality Act
IOM	International Organization for Migration
JMDI	Joint Migration and Development Initiative
JRRAP	Jamaica Reducing Re-Offending Action Plan
LPR	Lawful Permanent Resident
MOU	Memorandum of Understanding
NIB	Jamaican National Intelligence Bureau
NODM	National Organisation of Deported Migrants
PATH	Programme of Advancement Through Health and Education
PBNDS	Performance Based National Detention Standards
PICA	Jamaican Passport, Immigration and Citizenship Agency
TRN	Tax Registration Number
UDHR	Universal Declaration of Human Rights
USAID	U.S. Agency for International Development
UWI Mona	University of the West Indies at Mona, Jamaica
WHO	World Health Organization

1. U.S. DEPORTATION POLICIES AND PRACTICES

FOCUS **U.S. Government Actors Involved in Deportation**

Department of Homeland Security: DHS is a cabinet agency in the U.S. federal government with the stated goal to prepare for, prevent, and respond to emergencies within, at, and outside U.S. borders. Each of the following is a sub-unit of DHS.

Immigration and Customs Enforcement: ICE is the investigative agency within DHS. Responsible for detention and removal management, ICE oversees the detention centers in which immigrants are housed, as well as their transportation to receiving countries. ICE can also employ outside contractors to manage these detention facilities and to transport deported persons to receiving countries. In addition, ICE issues the Performance Based National Detention Standards (PBNDS),[44] which is a set of non-binding expectations regarding humane conditions and medical treatment for the detention facilities to which they apply. These standards provide guidance for ICE, Health Service Corps officials, and contractors running detention centers.[45]

ICE Health Service Corps (formerly the Division of Immigration Health Services): The Corps provides healthcare for detained persons within detention centers, oversees the provision of medical care during the transportation of deported persons to the receiving country, and serves as a medical authority for ICE.

Customs and Border Protection: CBP is responsible for border security. CBP officials have the authority to apprehend immigrants within 100 miles of ports of entry and place them in expedited removal, a fast-track form of deportation in which there is no hearing or review by an immigration judge.[46]

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44 *See 2008 Operations Manual ICE Performance Based National Detention Standards (PBNDS)*, U.S. Dep't of Homeland Sec., http://www.ice.gov/detention-standards/2008/ (last visited Mar. 24, 2011) [hereinafter PBNDS]. ICE is currently in the process of updating the 2008 PBNDS. E-mail from Andrew Lorenzen-Strait, Senior Pub. Engagement Officer, Immigration and Customs Enforcement, to authors (Mar. 4, 2011) (on file with authors).

45 Reports have shown that the PBNDS are often not followed or met. ***E.g.***, Texas Appleseed Report, *supra* note 4, at 11.

46 Prior to 1996, immigrants seeking admission to the United States without documentation were granted a hearing with an immigration judge. The Illegal Immigration and Immigrant Responsibility Act of 1996 authorized CBP to immediately remove persons with fraudulent documents or without immigration documentation at points of entry to the United States. Simona Agnolucci, Note, ***Expedited Removal: Suggestions for Reform in Light of the United States Commission on International Religious Freedom Report and the Real ID Act,*** 57 Hastings L.J. 619, 622 (2006). In 2004, DHS expanded the application of this authority to include noncitizens apprehended within 100 miles of the border and who had entered the United States without inspection fewer than fourteen days

Immigrants residing or working in the United States may enter the U.S. deportation system in various ways. For example, they may be seized by Immigration and Customs Enforcement (ICE) during a workplace raid, end up in Customs and Border Protection (CBP) custody through an encounter in the United States within 100 miles of the border, or be picked up by local law enforcement.[47] Immigrants may be apprehended for, among other things, overstaying their visa, not possessing proper immigration documentation, or upon a criminal conviction.[48] After being apprehended by ICE, CBP, or another law enforcement authority, immigrants may end up in the immigration or federal court system. Usually, individuals convicted of criminal offenses serve their time in federal or state prison and are then transferred into the immigration system. Most of these individuals have convictions for non-violent offenses.[49] Individuals charged with civil offenses, such as overstaying their visas, proceed directly to the immigration system for a determination of whether they are removable from the United States.

In 1996, a change in the law made it easier for the United States to deport individuals convicted of minor criminal offenses. Two pieces of legislation expanded the immigration definition of "aggravated felony" to encompass criminal convictions for some minor misdemeanors, and also lowered the threshold of imposed sentencing.[50] For example, pursuant to the 1996 law, forgery by signing traffic tickets with a false name[51] and shoplifting[52] are among the hundreds of criminal convictions that have been held by the Board of Immigration Appeals (BIA) or federal courts to constitute "aggravated felonies." Additionally, if an immigrant's conviction is identified as an "aggravated felony" under immigration law, he becomes permanently barred from re-entering the United States.[53] Thus, forgery, shoplifting, or other such crimes may trigger deportation back to a person's country of origin with no possibility of return.[54]

In addition to significant expansion of the list of crimes that make non-citizens eligible for deportation, the 1996 law also restricted judges' discretion to consider the hardship that deportation

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earlier. *Immigration Law and Policy: Removal Defenses and Procedures,* Nat'l Immigration Law Ctr. (Mar. 23, 2006), http://www.nilc.org/immlawpolicy/removpsds/removpsds151.htm.

47 *See Secure Communities,* Dep't of Homeland Sec., http://www.ice.gov/secure_communities (last visited Feb. 27, 2011).

48 According to Human Rights Watch, the mentally disabled are incarcerated at disproportionate rates. Many persons with mental disabilities, especially those who are homeless, do not receive mental health treatment. As a result, they may be imprisoned for committing even a low-level nonviolent offense. *U.S.: Number of Mentally Ill in Prisons Quadrupled*, Human Rights Watch (Sept. 5, 2006), http://www.hrw.org/en/news/2006/09/05/us-number-mentally-ill-prisons-quadrupled.

49 Texas Appleseed Report, *supra* note 4, at 10.

50 The two pieces of legislation are known as the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). Socheat Chea, *The Evolving Definition of an Aggravated Felony*, EmploymentVisaImmigration.com, http://www.employmentvisaimmigration.com/images/Articles/DefinitionFelony.pdf (last visited Mar. 27, 2011).

51 Amnesty Int'l, Jailed Without Justice: Immigration Detention in the USA 19 (2009).

52 Terry Coonan, *Dolphins Caught in Congressional Fishnets: Immigration Law's New Aggravated Felons,* 12 Geo. Immigr. L.J. 589, 605 (1998).

53 *Id.*

54 *Id.*

imposes on the individual and his or her family. Prior to 1996, the Executive Office of Immigration Review (EOIR) had discretion to indefinitely suspend a deportation order for noncitizens that had lived in the United States for seven years and whose departure would impose extreme hardship on the noncitizen or his or her family members.[55] In 1996, suspension of deportation was replaced by cancellation of removal. Cancellation of removal is available to lawful permanent residents (LPRs) who have resided in the United States for seven years and have held LPR status for five years.[56] However, it is not available in certain cases, such as when an LPR is convicted of an "aggravated felony" under immigration law.[57] For nonpermanent but legal residents, cancellation of removal is available only if the residents have lived in the United States for ten years, can make a showing of good moral character, and their departure would result in "exceptional and extremely undue hardship"[58] to a family member.[59] These drastic changes in the law have greatly increased deportation levels and have had a dramatic impact on immigrants and their families in the United States, as well as the overall landscape of the U.S. deportation system.[60]

A growing body of evidence shows that immigrants with mental disabilities are not given fair treatment in the immigration court system,[61] compounding the effect of the 1996 laws. Immigrants who cannot afford an attorney do not have an effective right to counsel,[62] which results in many low-income mentally disabled persons not receiving the assistance they need to effectively present a case.[63] In addition, there are no procedural guidelines in place once a person is found to be legally incompetent, and immigration judges and Department of Homeland Security (DHS) attorneys are not adequately trained to recognize and address mental disabilities in court proceedings.[64] As such, many of the system's primary actors remain ignorant of and insensitive to

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55 Angela M. Banks, *Deporting Families: Legal Matter or Political Question?*, 27 Ga. St. U. L. Rev. 489, 508-10 (2011).

56 *Id*.

57 *Id*.

58 8 U.S.C. § 1229b(b)(1)(D) (2006).

59 Banks, *supra* note 55, at 510.

60 *See* Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms,* 113 Harv. L. Rev. 1936 (2000); *see also* Human Rights Watch, Forced Apart: National Statistics on Deportation for Crimes (2007).

61 *E.g.*, Human Rights Watch Report*, supra* note 4, at 3-5.

62 Indigent immigrants are not provided with counsel by the U.S. government in immigration proceedings; they must hire their own or face trial pro se. *Id.* at 5 & nn.14-15.

63 *Id.* at 26, 44-45.

64 Texas Appleseed Report, *supra* note 4, at 49-63. However, efforts are being made to provide judges with more information. In April 2010, the Executive Office of Immigration Review added a new section on mental health issues to the Immigration Judge Benchbook. Press Release, EOIR Expands Immigration Judge Benchbook, U.S. Dep't of Justice, Executive Office of Immigration Review, (Apr. 23, 2010), *available at* www.justice.gov/eoir/press/2010/MentalHealthBenchbookrelease04232010.pdf. Additionally, some courts take issues pertinent to mental disability into consideration. *See Kholiyavsky v. Mukasey*, No. 07-1020 (7th Cir. 2008) (remanding after finding that lack of ability to procure necessary medication for bipolar disorder in Russia should be considered in claim of humanitarian asylum); *see also* Nina Bernstein, *Judge Grants Asylum to Chinese Immigrant*, N.Y. Times, May 17, 2010, *available at* http://cityroom.blogs.nytimes.com/2010/05/17/judge-grants-asylum-to-chinese-immigrant/ (discussing an immigration judge who found that documented history of mental disability excused asylum-seeker

the challenges faced by this particularly vulnerable group. [65]

This section of the report describes the various difficulties that persons with mental disabilities face shortly prior to and during deportation. It also addresses the challenges that they encounter immediately upon arrival, and suggests policy changes that could be implemented to help persons with mental disabilities overcome these difficulties.

A. DETENTION

While many individuals are detained throughout their immigration proceedings, others are taken into mandatory detention only after receiving a final order of removal. ICE is required to detain immigrants ordered removed for the ninety day period prior to their deportation.[66] The detention centers in which immigrants are placed may be managed and operated by ICE, private contractors, or county or state jails. Often, retrieving travel documents takes much longer than ninety days, and lengthy detention, lasting months or sometimes years, is the norm for many immigrants awaiting deportation.[67] Consistent with existing data,[68] the individuals interviewed for this report remained in immigration detention for three to eight months, and were often relocated to multiple detention centers over a period of days, weeks, or even months, before finally being placed on their deportation flight.[69]

Individuals with mental disabilities face numerous challenges in immigration detention. For example, concerns have surfaced over the adequacy of healthcare, and specifically mental healthcare, while in immigration detention. Previous reports have found inadequate medical assessments, detention center staff often unqualified to meet the needs of the mentally disabled, and delays faced by detained persons in obtaining necessary care.[70] Additionally, the use of isolation to control persons suffering from a mental disability, which is reportedly not uncommon in ICE detention, often exacerbates symptoms.[71] Overall, conditions in detention often contribute to the dramatic deterioration of the mental health of mentally disabled individuals.[72]

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from failing to meet one-year deadline for petition).

65 Texas Appleseed Report, *supra* note 4, at 49-63.

66 Human Rights Watch Report, *supra* note 4, at 77.

67 *Id.* Regulations that were promulgated pursuant to a 2001 Supreme Court ruling stipulate that review of an immigrant's custody should occur after 180 days of detention. Subsequently, a person can be detained if found to be obstructing removal. *Id.*

68 *E.g.*, Texas Appleseed Report, *supra* note 4, at 9, 43.

69 Interview with Brian in Kingston, Jam. (Jan. 11, 2011) (reporting that he was in detention for six months); Interview with Anthony in Kingston, Jam. (Jan. 11, 2011) (reporting that he spent three months in detention); Interview with Robert in Kingston, Jam. (Jan. 12, 2011) (reporting that he spent one year in detention).

70 Texas Appleseed Report, *supra* note 4, at 21-26.

71 *Id.*

72 *Id.*

FOCUS A Lack of Communication Between Governments

The lack of effective communication between the U.S. and Jamaican governments negatively affects mentally disabled persons in detention. In the case of Jamaica, inter-governmental communication begins when ICE contacts the Jamaican Embassy in Washington, D.C., to certify that a particular person scheduled for deportation is in fact a Jamaican citizen.[73] The Jamaican Embassy then proceeds to contact the Passport, Immigration and Citizenship Agency (PICA) in Jamaica so as to obtain necessary travel documents, including birth certificates, passports, or in many cases, only a temporary travel document.[74] Next, the Jamaican Embassy gives Jamaica's National Intelligence Bureau (NIB), which controls and coordinates the Jamaican Constabulary (police) Force's intelligence functions, the names, dates of birth, and criminal histories (including conviction documents), of persons being deported. [75]

Dwight Nelson, Jamaica's Minister of National Security, believes that more substantive communication regarding the individuals being deported is necessary, a belief which was forcefully echoed by officials at the NIB, PICA, and various non-governmental organizations. Minister Nelson explained that more background information on persons being deported to Jamaica would aid the Jamaican government in connecting mentally disabled individuals with reintegration programs, medical treatment, and their family members.[76] Additionally, because the United States and Jamaica have no memorandum of understanding (MOU) regarding deportation similar to those the United States has with other countries,[77] there is no standard timeline for the provision of travel documents and no standards for information sharing.

ICE deportation officers inconsistently notify the Jamaican Embassy in the United States of a given individual's mental disabilities.[78] This violates ICE detention and removal guidelines, which require ICE deportation officers to notify receiving countries of cases requiring psychological care

73 Interview with Dwight Nelson, Minister of Nat'l Sec. of Jam., in Kingston, Jam. (Jan. 13, 2011); E-mail from Andrew Lorenzen-Strait, Senior Pub. Engagement Officer, Immigration and Customs Enforcement, ***supra*** note 44.

74 ***Id.***

75 Interview with Jam. Nat'l Intelligence Bureau official in Kingston, Jam. (Jan. 14, 2011).

76 Interview with Dwight Nelson, Minister of Nat'l Sec. of Jam., ***supra*** note 73.

77 ICE has MOUs with Vietnam and Guatemala regarding deportation. ***See ICE to Resume Deportations to Vietnam***, Detention Watch Network (Jan. 22, 2008), http://www.detentionwatchnetwork.org/node/527; ***Guyana signs agreement for deportees reintegration,*** W. Indian News, June 4, 2009, ***available at*** http://www.thewestindiannews.com/guyana-signs-agreement-for-deportees-reintegration/. ICE also has MOUs with El Salvador and Honduras regarding electronic travel documents. ***Secure Communities: Quarterly Report – Fiscal Year 2009 Report to Congress***, U.S. Immigration & Customs Enforcement (Feb. 17, 2009), www.ice.gov/doclib/foia/secure_communities/congressionalstatusreportfy091stquarter.pdf.

78 Interview with Jam. Passport, Immigration and Citizenship Agency official, ***supra*** note 13.

to allow special arrangements to be made.[79] In fact, no one interviewed during the course of the fact-finding process indicated that they knew of mental health services being provided upon arrival as a result of inter-governmental coordination.[80]

In contrast, the United Kingdom is doing a far better job of providing complete information about the individuals they deport to Jamaica, says Minister Nelson. He explained,

> We have an arrangement with the U.K. . . . the second-largest source of deported persons. That arrangement is much more comprehensive. The background information is much more accessible; [we get] health records, antecedents of the person, their family situation. They offer assistance with reintegration. The U.S. is still not at that point and there are gaps we have to work with. The person arrives [without medication]. We're not told beforehand that they have mental issues.[81]

Before the deportation of certain persons with mental disabilities, officials in the United Kingdom communicate with their counterparts in Jamaica regarding availability of prescribed medications.[82]

Overall, increased and more robust communication between U.S. and Jamaican authorities regarding deportation is of paramount importance to Jamaican officials, non-governmental organizations, and academic researchers.[83]

Memorandum of Understanding Recommendation[84]

The U.S. Department of Homeland Security, as represented by U.S. Immigration and Customs Enforcement and in consultation with other appropriate government agencies, should establish a memorandum of understanding with its corresponding branch in the receiving country's government to advance the best practices, policies and procedures for the deportation of persons with mental disabilities.

79 *Infra* Appendix E: ICE Flight Operations Unit Continuity Book.

80 Interview with Dr. Wendel Abel, Dep't of Psychiatry, Univ. of the W. Indies at Mona, in Kingston, Jam. (Jan. 10, 2011); Interview with Nurse Joy Crooks, Adm'r, Comm. for the Upliftment of the Mentally Ill, *supra* note 26.

81 Interview with Dwight Nelson, Minister of Nat'l Sec. of Jam., *supra* note 73.

82 Interview with British High Comm'n officials in Kingston, Jam. (Jan. 14, 2011).

83 *See infra* Part 2.a.2.

84 *See* Memorandum of Understanding Recommendation, *infra* Part 5.

B. STAGING AND DEPORTATION

"The process of leaving Batavia [detention center in New York] is a five-hour trip in a Dodge van filled to capacity, shackled, and without a cushion."

Glen Powell, President of the National Organisation of Deported Migrants

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After months in post-removal-order detention, immigrants are transported to "staging" centers immediately prior to deportation. From these staging centers, individuals are placed on planes and flown to the receiving country. The majority of individuals with whom our research team spoke had been flown to Kingston out of a staging center in Louisiana.

Immigrants are flown from the United States to Jamaica either on planes chartered specifically for this purpose, or on commercial flights with other passengers. Each charter flight is overseen either by ICE or by a contractor. There are approximately seventy to ninety people on each charter flight,[85] and typically about five of these individuals are female.[86] Approximately six or seven guards staff the flights. On the charter flights, individuals are shackled at the wrists and ankles; they are also chained to each other by the waist.[87] One deported person elaborated: "When you go to the bathroom, you go with your partner. Quite literally."[88] While immigrants on commercial flights typically fly without shackles, one woman interviewed had been shackled on a commercial flight amongst all of the other passengers traveling to Kingston that day.[89]

The NIB estimates that approximately a third of the deported people who are brought to Kingston on each charter flight arrive in their conspicuous, brightly colored prison jumpsuits.[90] Some deported persons wear a jumpsuit because they could not access other clothing in detention. Individuals often wear the same clothes constantly for the three days prior to deportation.[91] By the time of the flight, this clothing has sometimes become ragged and dirty, leading many individuals to settle instead for a jumpsuit, which is their only alternative.

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85 Interview with Bernard Headley, Professor in Faculty of Soc. Scis., Sociology, Psychology, and Soc. Work, Univ. of the W. Indies at Mona, in Kingston, Jam. (Jan. 10, 2011).

86 Headley, with Gordan & MacIntosh, ***supra*** note 25, at ix.

87 Interview with Ishon Williams, Counselor, & Marleen Brown, Outreach Coord., Family Unification & Resettlement Initiative, in Kingston, Jam. (Jan. 13, 2011).

88 ***Id.***

89 Interview with Paula in Kingston, Jam. (Jan. 13, 2011).

90 Interview with Jam. Nat'l Intelligence Bureau official, ***supra*** note 75.

91 ***Id***.

ICE's stated policy is to ensure the presence of medical practitioners on charter flights to countries of origin.[92] On board, the medical practitioner follows the U.S. Marshal down the aisle to dispense medication and address medical concerns if they arise.[93]

According to an official with the NIB, persons with mental disabilities are regularly involuntarily medicated to sedate them during flights to Kingston.[94] Sedation can pose particular challenges for persons with mental disabilities, in part because the Jamaican police, who assist in receiving and processing deported persons, are not always informed that a particular individual has a mental disability or is sedated. If this regular use of sedation is indeed standard practice, ICE may be violating its own policies. In a 2008 memorandum, ICE made clear that detained persons are not to be involuntarily medicated before removal if medication is not therapeutically indicated.[95] A judicial court order is required to involuntarily medicate any individual in ICE custody prior to removal.[96]

Sedation, combined with governmental communication lapses, may compound the often inhospitable reception of mentally disabled person to Jamaica. The sedation administered by ICE may begin to wear off while being processed by the Jamaican police. NIB officials reported instances in which they believed it was necessary to physically restrain certain disabled individuals, reportedly because they were caught off-guard by the mentally disabled person's change in behavior.[97]

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92 E-mail from Andrew Lorenzen-Strait, Senior Pub. Engagement Officer, Immigration and Customs Enforcement, *supra* note 44.; *infra* Appendix D: ICE Removals by Special Charter Aircraft.

93 Interview with Ishon Williams, Counselor, & Marleen Brown, Outreach Coord., Family Unification & Resettlement Initiative, *supra* note 87.

94 Interview with Jam. Nat'l Intelligence Bureau official, *supra* note 75.

95 Memorandum from John P. Torres, Dir., Office of Det. and Removal Operations, Immigration and Customs Enforcement, to Assistant Dirs., Deputy Assistant Dirs., Field Officer Dirs., & Deputy Field Officer Dirs. (Jan. 31, 2008), *available at* http://www.ice.gov/foia/readingroom.htm.

96 *Id*.

97 *Id*. Others believe that the police often resort to force because they are not appropriately trained to manage interactions with the mentally disabled. Interview with Dr. J. Carolyn Gomes, Dir., Jamaicans for Justice, *supra* note 28.

C. ARRIVING IN KINGSTON

"There should be some dignity to the process. You're being forced out of a country, which is already undignified enough without arriving without food, somewhere to live, dirty and with no clothes."

Official, Jamaican National Intelligence Bureau

"Imagine a deportee with family in Montego Bay, lands in Kingston, gets through processing at 6:30 at night, with no phone call, no medication, and a mental illness. You can see the dangers right there."

Ishon Williams, Counselor, Family Unification and Resettlement Initiative

"I landed at 10 PM and they just let me go. . . . I had a twenty dollar bill in my hand and that was it."

Darell, a deported individual diagnosed with bipolar disorder

1. Processing and Release

The charter planes carrying deported persons from the staging facility in Louisiana to Jamaica typically land on the last Thursday of each month at approximately noon.[98] Upon arrival in Kingston,[99] deported persons are taken in a convoy of police cars, with sirens blaring, to the Central Police Station ("Central") in downtown Kingston for processing.[100]

When they arrive at Central, many people are exhausted, empty-handed, and hungry.[101] Glen Powell, President of the National Organisation of Deported Migrants (NODM), recalled his own flight to Kingston in July 2009: "They treat you with disdain and you aren't even fed."[102] De-

98 Interview with Ishon Williams, Counselor, & Marleen Brown, Outreach Coord., Family Unification & Resettlement Initiative, ***supra*** note 87; Interview with Captain Reuben Phillips, Dir., 2nd Chance Servs., in Kingston, Jam. (Jan. 12, 2011).

99 Kingston is the location to which all Jamaicans are deported regardless of the deported person's city or town of origin. Interview with Nurse Joy Crooks, Adm'r, Comm. for the Upliftment of the Mentally Ill, ***supra*** note 26.

100 Interview with Captain Reuben Phillips, Dir., 2nd Chance Servs., ***supra*** note 98; Interview with Everton Tracey, Program Manager, & Charles Artley, Field Officer, 2nd Chance Servs., in Kingston, Jam. (Jan. 12, 2011).

101 *Id*.

102 Interview with Glen Powell, President, Nat'l Org. of Deported Migrants, in Kingston, Jam. (Jan. 10, 2011).

ported persons reportedly told the NIB that they have not eaten for a day or two prior to arrival.[103] However, ICE detention and removal guidelines indicate that officials should ensure that an adequate supply of food and water is provided to deported persons on flights.[104]

Upon arrival at Central, the Jamaican police question each deported person. "It's like a trial all over again," stated Oswald Dawkins, who was deported from the United States in June of 2009, and co-founded the NODM.[105] He was asked why he was deported, what he did wrong, and why he committed a crime, each question reflecting the assumption that a deported person must have done something seriously wrong to warrant being sent back to Jamaica.[106] Missing from this line of questioning, however, are much-needed inquiries into the mental health of the individual.[107] Deported persons with mental disabilities can often be easily filtered through processing without anyone becoming aware of their condition or connecting them with the appropriate services.

By the time many individuals are processed at Central, it is dark outside.[108] The downtown neighborhood around Central is one of the city's most dangerous.[109] This impoverished section of Kingston is the site of frequent and serious urban conflict characterized by gang activity, gun violence, and drug-related crime.[110] Deported persons are immediately confronted by these hazards and must safeguard themselves against those who would exploit them. Marleen Brown has become familiar with these dangers as the Outreach Coordinator of the Family Unification and Resettlement Initiative's (FURI) Kingston branch, which provides reintegration assistance to individuals deported to Jamaica. She explains, "because [Central Police Station] is so central, it's easier for people to take advantage. . . . It is routine now—people lay in wait [for deportees to come out from Central]. Hookers, hustlers, taxi men—everyone is trying to get American dollars."[111]

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103 Interview with Jam. Nat'l Intelligence Bureau official, ***supra*** note 75. To address this problem, the NIB has suggested that a separate reception center be created, where persons returning from the United States could receive some food and perhaps some money and a shower upon arrival. ***Id.***

104 ***Infra*** Appendix D: ICE Removals by Special Charter Aircraft.

105 Interview with Oswald Dawkins, Nat'l Org. of Deported Migrants, in Kingston, Jam. (Jan. 10, 2011).

106 ***Id.***

107 ***Id.***

108 Interview with Ishon Williams, Counselor, & Marleen Brown, Outreach Coord., Family Unification & Resettlement Initiative, ***supra*** note 87.

109 Earl M. Bartley, ***The Structure of Security Arrangements for Downtown Kingston***, JAM. GLEANER, Nov. 17, 2002, ***available at*** http://jamaica-gleaner.com/gleaner/20021117/focus/focus2.html.

110 Colin Clarke, ***Politics, Violence, and Drugs in Kingston, Jamaica***, 25 BULL. OF LATIN AM. RES. 420, 423-38 (2006).

111 ***Id***.

2. Lacking Information

For many deported persons who left Jamaica at a young age, they are returning to a country significantly different than remembered, if remembered at all.[112] As such, information about the country and contact information for local service providers is often critical to the deported person's short-term safety upon arrival. The United States' failure to provide this information results in deported persons often arriving uninformed about housing, employment, and health services. This presents serious risks, especially for persons with mental disabilities.[113]

In recent years, the Jamaican government has allowed two organizations that provide reintegration services, FURI and 2nd Chance Services, to greet the deported persons arriving at Central and to provide some assistance with finding shelter and adjusting to life in Jamaica.[114] These organizations also distribute refreshments and phone cards so that the returning persons can refuel and contact their families, if they in fact have any relatives to call. FURI and 2nd Chance Services connect some deported persons with mental health services, but many fall through the cracks due to the limited availability of services, the lack of information available to service providers regarding who may require mental health services, and the fear of stigmatization that keeps many deported persons from seeking the help they need.

Without such assistance, the difficulties of navigating what is often an unfamiliar city at night can be debilitating for deported persons with little to no money,[115] let alone those with mental disabilities. Randall, who told researchers that he has paranoid schizophrenia, "pleaded with someone" at the airport to transport him to a shelter.[116] Finley, who also suffers from paranoid schizophrenia, was transported to a group home by the police when he told them he had nowhere to go.[117] Clayton, who described himself as a diagnosed paranoid schizophrenic, faced similar

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112 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., *supra* note 27.

113 Interview with Ishon Williams, Counselor, & Marleen Brown, Outreach Coord., Family Unification & Resettlement Initiative, *supra* note 87.

114 FURI and 2nd Chance Services are the only two groups officially authorized by the Jamaican government to be present at the Central Police Station when deported persons arrive. They alternate each month assisting persons in unifying with their families, providing information on how to obtain shelter, and facilitating the navigation of a country that is unfamiliar to a majority of those arriving. *Id*.; Interview with Captain Reuben Phillips, Dir., 2nd Chance Servs., *supra* note 98.

115 Ashley M. Hyde, a Fulbright scholar affiliated with the National Organisation of Deported Migrants in Kingston, shared an emblematic story. While at the airport to help receive people arriving from the United States, she encountered a man who smelled strongly of sugar and had suffered a seizure. Inferring that he may have been diabetic, she tried to take him to a hospital, but he ran away. If notification of his condition had been communicated beforehand, service providers or government officials could have been ready with the supplies or services necessary to keep his condition stable. Interview with Ashley M. Hyde in Kingston, Jam. (Jan. 10, 2011).

116 Interview with Randall in Kingston, Jam. (Jan. 14, 2011).

117 Interview with Finley in Kingston, Jam. (Jan. 11, 2011).

challenges. When he arrived in Jamaica, he said, "I had ten [U.S.] dollars in my pocket, and I had to find my way to my Auntie's house."[118] Fortunately, he remembered where his aunt's house was located, despite the fact that he had not visited it since he was eight, twenty years earlier.

Joel, a veteran of the U.S. Navy, was diagnosed with paranoid schizophrenia long before his detention and deportation.[119] While in various detention centers in the United States, he was given no information about Jamaica and made no plans for what he would do upon arrival. After arriving at the Kingston airport, he ran away from the police and attempted to walk to the house he remembered, from years earlier, as his family's residence. Unfortunately, he never reached it. Instead, he slept in a park and survived by begging for food. He could not say how long he lived in the park. Eventually, he saw someone he recognized—his sister. "She found me," he explained.

If the United States informed individuals in detention of the challenges they are likely to face in Jamaica, as well as the resources available to circumvent those challenges, deported persons would be more likely to connect with a service provider upon arrival. This in turn would increase the likelihood of their safety during their first few nights in Kingston, as well as their overall chances of successful long-term integration.

In contrast to the United States, the United Kingdom provides individuals in detention with at least some information about the options available to them in Jamaica. The United Kingdom allows NGOs to enter detention centers to inform individuals of the assistance that is available upon arrival in Jamaica.[120] One female interviewee who had been deported from the United Kingdom saw a sign for Hibiscus, a U.K.-funded organization with an office in Kingston, that provides temporary housing and integration services to women, while she was still in detention.[121] A number of service providers and Jamaican government officials commended the U.K. program for providing information to deported people as well as for the impressive system of communication between the U.K. and Jamaican governments.[122]

Training and Programmatic Support Recommendation[123]

Congress should appropriate funds for the purpose of contracting local NGOs in receiving countries with expertise in human rights, to train government actors, including immigration, police, and judicial officers, as well as local businesses. The goal of such programs should be to ensure that the needs and rights of mentally disabled persons are better recognized and respected in receiving countries.

118 Interview with Clayton in Kingston, Jam. (Jan. 14, 2011).

119 Interview with Joel in Kingston, Jam. (Jan. 14, 2011).

120 Interview with international organization official in Kingston, Jam. (Jan. 13, 2011).

121 Interview with Alice in Kingston, Jam. (Jan. 10, 2011).

122 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., *supra* note 27.

123 *See* Training and Programmatic Support Recommendation, *infra* Part 5.

3. Meeting Immediate Needs

"He came with nothing, nothing, nothing. Just the clothes on his back."

Family member of Reid, a deported individual with dyslexia

"Invariably, deportees come to Jamaica with nothing. Their only possession is the clothes that they wear. They've worked in the U.S., paid taxes in the U.S., but because they are not U.S. citizens, they commit a simple offense and are sent back without [their money]."

Dwight Nelson, Jamaican Minister of National Security

Although deported persons with mental disabilities have a number of immediate needs upon arrival, such as securing medication,[124] housing,[125] and identification,[126] many arrive without the financial resources needed to secure these necessities. This is largely a result of immigrants being deported from the United States without an opportunity to access their personal and financial effects before deportation. This contributes to the cycle of poverty faced by most deported persons: without money to pay for the fees necessary to obtain personal identification, a deported person with a mental disability is unlikely to find steady employment, which will in turn impair his ability to pay for housing and medication.[127]

An official from PICA confirmed that one of the primary concerns of individuals who approach them for assistance is how to access their remaining assets in the United States.[128] The PICA official recommended that arrangements be made to liquidate the finances of deported persons while they are still in the United States, because it would help the person finance their reintegration.[129] In addition, he recommended that the United States facilitate pension access for deported persons.[130]

Clifton, a sixty-two-year-old deported male, experienced many challenges when attempting to access money that he had earned in the United States.[131] Clifton explained that, although he had earned money working in the detention center, it was not released to him prior to deportation,

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124 *See infra* Part 2.a.

125 *See infra* Part 2.b.

126 *See infra* Part 2.c.

127 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., ***supra*** note 27.

128 Interview with Jam. Passport, Immigration and Citizenship Agency official, ***supra*** note 13.

129 *Id.*

130 *Id.*

131 Interview with Clifton in Kingston, Jam. (Jan. 11, 2011).

and he was deported with only the clothes he wore on his back.[132] He expressed concern about how to access his pension, Social Security benefits, and a legal settlement that arose from an injury he sustained while employed by an electrical engineering company.[133] When asked about his experiences in Jamaica since his deportation, Clifton said "I'm very confined here, but that's to be expected, because I brought nothing with me."[134] Clifton's experience is not unique.[135]

Many deported persons also cannot access their personal effects left in the United States. The Performance Based National Detention Standards (PBNDS) are non-binding guidelines that include procedures for the secure storage of the personal effects in the possession of persons entering detention. Despite the existence of these guidelines, one deported person reported difficulties in receiving the personal effects with which he had entered detention.[136] In addition, the PBNDS do not explain whether or how detained persons can obtain additional personal effects from home prior to being deported to the receiving country.[137]

In contrast to the United States, the United Kingdom provides individuals with some access to their personal effects before deportation. The United Kingdom is reportedly consistent in returning items to people and allowing them to access belongings from their homes prior to deportation.[138] One woman who had arrived at Hibiscus from the United Kingdom owned a large duffle bag filled with clothing and other possessions, which she had been able to collect from her U.K. home before departure. By contrast, her roommate, a woman deported from the United States, was returned to Jamaica with only a small plastic bag containing a change of clothes and a few personal items.

The suitcase on the left was brought by a woman deported from the U.K.; the small bag on the right contains the belongings of a woman deported from the U.S.

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132 *Id.*

133 *Id.*

134 *Id*.

135 Interview with Everton Tracey, Program Manager, 2nd Chance Servs., *supra* note 100 ("I've seen one incident where someone here had money but I think his account was frozen by the government. Your family can't access it because it is your personal account.").

136 Interview with Brian, *supra* note 69.

137 *2008 Operations Manual ICE Performance Based National Detention Standards – Funds and Personal Property,* U.S. Dep't of Homeland Sec. 8 (Dec. 2, 2008), http://www.ice.gov/doclib/dro/detention-standards/pdf/funds_and_personal_property.pdf.

138 Interview with St. Rachel Ustanny, Exec. Dir., Hibiscus, in Kingston, Jam. (Jan. 11, 2011).

Communication and Preparation Recommendation: U.S. Immigration and Customs Enforcement Reintegration Assistance Team[139]

U.S. Immigration and Customs Enforcement (ICE) should select and task a team of ICE officers within each detention facility with the preparation of persons ordered deported for reintegration into the receiving country. Through an ICE Reintegration Assistance Team, persons ordered deported will be apprised of the appropriate steps, forms and processes to complete in order to obtain any and all personal funds in banks or owed through the government, to reclaim any and all property retained by ICE during their detention, and will be provided clear and comprehensive country-specific information to facilitate their identification and navigation of reintegration-related social services provided within the receiving country.

Communication and Preparation Recommendation: Embassy of the United States Reintegration Assistance Team[140]

The U.S. Department of State should establish a team or department within each of its Embassies to assist persons deported from the United States with the completion of reintegration tasks that require specialized knowledge of U.S. institutions or processes. Reintegration tasks addressed would include, but would not be limited to, facilitating the following for deported persons once they arrive in the receiving country:

A. the reclamation of personal identification and/or personal property retained by ICE during detention in the United States;
B. the reclamation of any and all personal funds from U.S. financial institutions; and
C. the release of any medical records from private or government medical facilities in the United States to the deported person or to a third-party of his or her choice.

139 *See* Communication and Preparation Recommendation 3: U.S. Immigration and Customs Enforcement Reintegration Assistance Team, *infra* Part 5.

140 *See* Communication and Preparation Recommendation 4: Embassy of the United States Reintegration Assistance Team, *infra* Part 5.

FOCUS **Veterans Affairs (VA) Benefits**

Dr. Wendel Abel, a professor of psychiatry at the University of the West Indies at Mona (UWI Mona), shared the story of his patient Nathan, a deported client who had migrated to the United States at an early age with his brother. Nathan fought for the United States in the first Gulf War, and later developed post-traumatic stress disorder. He was treated in a VA hospital, where he assaulted a nurse and was sent to prison, eventually leading to his deportation.

Dr. Abel realized that, even in Jamaica, Nathan was entitled to VA benefits. Fortunately, Nathan's brother was able to file a claim for Nathan with Dr. Abel's help, and they successfully reinstated Nathan's VA benefits. Nathan now receives US$2,000 per month, which is a "very adequate" income in Jamaica, according to Dr. Abel. However, Dr. Abel emphasized that this was not a typical case, and Nathan only received VA benefits because of the vigorous efforts of his brother in the United States.

4. Connecting with Family

An appropriate support system may be determinative of a person's chances of reintegration, especially if that person has a mental disability.[141] "The success rate of being established [back in Jamaica] depends on whether you have friends or family support," said Marleen Brown, Outreach Coordinator of FURI, an organization that provides reintegration services. "If you do [have this support], fifty percent [of deported persons] become established. If you do not, your chances are more like two out of ten."[142] Ishon Williams, a counselor at FURI, explained that the importance of family is particularly pronounced for a deported person with a mental disability, who "has to remember to take medications, get refills, monitor medications. They don't have funds to get more medication. They are on their own unless they have a family member."[143] Ultimately, Mr. Williams concluded, "It has been our experience that those without family support either end up on the street, in gangs or homeless."[144]

Although the involvement of a deported person's family, both in the United States and Jamaica, can make the difference between reintegration and marginalization, many deported persons face challenges when seeking family support. Transfer between detention centers, the cost of

141 *E.g.*, Interview with Ishon Williams, Counselor, & Marleen Brown, Outreach Coord., Family Unification & Resettlement Initiative, *supra* note 87.

142 Interview with Marleen Brown, Outreach Coord., Family Unification & Resettlement Initiative, *supra* note 87.

143 Interview with Ishon Williams, Counselor, Family Unification & Resettlement Initiative, *supra* note 87.

144 *Id.*

phone calls, and the possibility that family contact information is lost during the confiscation of belongings, all pose serious obstacles for deported persons seeking to connect with family before and after arrival. Captain Reuben Phillips, Director of the reintegration assistance organization 2nd Chance Services, stated that deported persons often arrive in Jamaica without having made meaningful contact with their family members either in the United States or Jamaica.[145] To mitigate this problem, his organization provides what amounts to an essential service to the deported people they meet at the airport: a phone call.[146]

Even Everton Tracey, a deported individual with no mental disability, strong family support, and some financial resources, faced an uphill battle to keep in touch with his family. His mother and wife set up an apartment for him in Kingston ahead of his deportation.[147] However, he found it difficult to let them know of his departure because his deportation was rescheduled three times. Amid all the scheduling changes, Everton was unable to alert his family before his departure. Everton explained, "When I got here, no one knew I was here."[148]

Individuals with mental disabilities face additional obstacles to connecting with their families. Dr. Wendel Abel, a professor of psychiatry at UWI Mona, often helps mentally disabled deported persons to locate their families. Dr. Abel described one deported patient who had no personal recollection of his family in Jamaica. Dr. Abel believed this was due to a combination of factors: he had moved to the United States at age eight, suffered from a mental disability, and was a victim of sexual abuse. No effort was made to locate or contact his family in Jamaica before he landed in Kingston. Dr. Abel recalls, "Had it not been for our aggressive search, we wouldn't have been able to make contact. He would have ended up homeless."[149]

145 Interview with Captain Reuben Phillips, Dir., 2nd Chance Servs., ***supra*** note 98.

146 ***Id.***

147 Interview with Everton Tracey, Program Manager, 2nd Chance Servs., ***supra*** note 100.

148 ***Id.***

149 Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, ***supra*** note 80.

Communication and Preparation Recommendation: U.S. Family Notification of Departure[150]

U.S. Immigration and Customs Enforcement (ICE) should: 1) provide persons ordered deported the opportunity to notify their U.S.-based family of the impending deportation, or 2) if the person ordered deported provides informed consent for ICE to issue notification, ICE should make a good faith effort to notify his or her U.S.-based family of the impending deportation. If the date of deportation changes, ICE should provide persons ordered deported another opportunity to inform their families of the new date of departure.

Communication and Preparation Recommendation: Family/Service Provider Notification of Arrival[151]

U.S. Immigration and Customs Enforcement (ICE) should: 1) provide persons ordered deported the opportunity to notify their receiving country-based family and/or relevant receiving country-based service providers of the impending deportation, or 2) if the person ordered deported provides informed consent for ICE to issue notification, ICE should make a good faith effort to notify his or her receiving country-based family and/or relevant receiving country-based service providers of the deported person's impending deportation.

150 *See* Communication and Preparation Recommendation 1: U.S. Family Notification of Departure, *infra* Part 5.

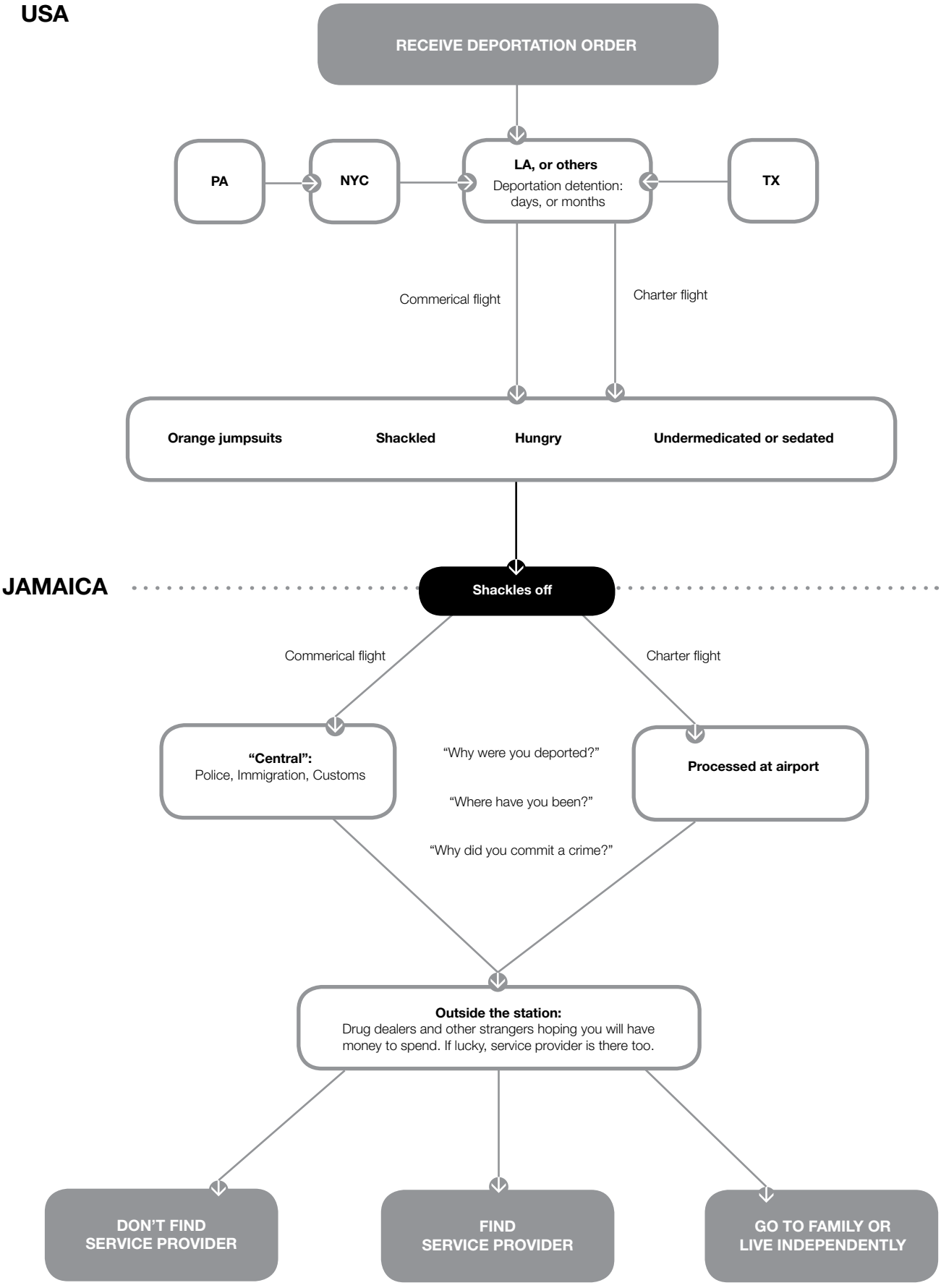
151 *See* Communication and Preparation Recommendation 2: Family/Service Provider Notification of Arrival, *infra* Part 5.

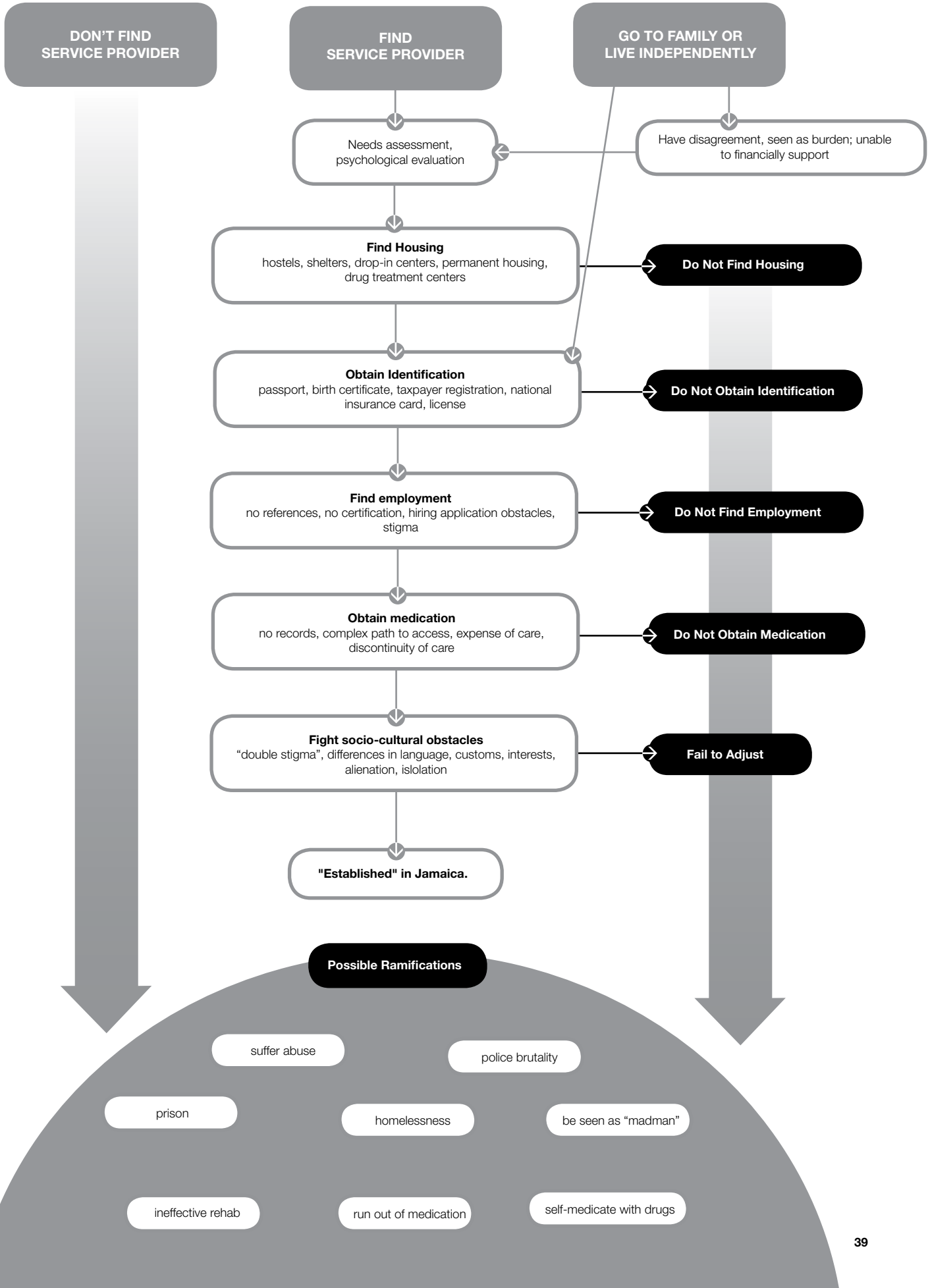
2. "HOME" BUT HOMELESS: BARRIERS TO REINTEGRATION

When deported persons with mental disabilities arrive in Jamaica, they are typically in need of mental health treatment and medication, shelter, employment, assistance in reuniting with their families, identification documents, and support in transitioning to a culture that is foreign or unfamiliar. As discussed above, accommodations are rarely made to ensure that deported persons with mental disabilities are connected with the services they need immediately upon landing.[152]

This section of the report describes the various barriers to integration that deported persons with mental disabilities face after arrival in Jamaica. Utilizing international human rights law to frame the discussion, this section will juxtapose the obstacles faced by deported persons against relevant international human rights standards. The most vulnerable populations, including the mentally disabled, should have access to the support, services, and protections necessary for the full enjoyment of their human rights in receiving countries. Finally, the section provides some examples of policy and legislative changes that could ameliorate the obstacles to post-deportation reintegration and survival.

152 Interview with Marleen Brown, Outreach Coord., Family Unification & Resettlement Initiative, ***supra*** note 87; Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, ***supra*** note 80.


USA
RECEIVE DEPORTATION ORDER
PA
NYC
LA, or others
Deportation detention: days, or months
TX
Commerical flight
Charter flight
Orange jumpsuits
Shackled
Hungry
Undermedicated or sedated
JAMAICA
Shackles off
Commerical flight
Charter flight
"Central":
Police, Immigration, Customs
"Why were you deported?"
"Where have you been?"
"Why did you commit a crime?"
Processed at airport
Outside the station:
Drug dealers and other strangers hoping you will have money to spend. If lucky, service provider is there too.
DON'T FIND SERVICE PROVIDER
FIND SERVICE PROVIDER
GO TO FAMILY OR LIVE INDEPENDENTLY


DON'T FIND SERVICE PROVIDER
FIND SERVICE PROVIDER
GO TO FAMILY OR LIVE INDEPENDENTLY
Needs assessment, psychological evaluation
Have disagreement, seen as burden; unable to financially support
Find Housing
hostels, shelters, drop-in centers, permanent housing, drug treatment centers
Do Not Find Housing
Obtain Identification
passport, birth certificate, taxpayer registration, national insurance card, license
Do Not Obtain Identification
Find employment
no references, no certification, hiring application obstacles, stigma
Do Not Find Employment
Obtain medication
no records, complex path to access, expense of care, discontinuity of care
Do Not Obtain Medication
Fight socio-cultural obstacles
"double stigma", differences in language, customs, interests, alienation, islolation
Fail to Adjust
"Established" in Jamaica.
Possible Ramifications
suffer abuse
police brutality
prison
homelessness
be seen as "madman"
ineffective rehab
run out of medication
self-medicate with drugs

A. THE RIGHT TO HEALTH: ACCESS TO MEDICAL TREATMENT, MEDICATION, AND MEDICAL RECORDS

FOCUS The Right to Health

The Right to Health is guaranteed in Article 25(1) of the Universal Declaration of Human Rights (UDHR),[153] Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),[154] and Article 25 of the Convention on the Rights of Persons with Disabilities (CRPD).[155]

The Committee on Economic, Social, and Cultural Rights (CESCR), which monitors implementation of the ICESCR, has stated that to respect, protect, and fulfill the right to the highest attainable standard of health, States must ensure that health facilities, goods, and services satisfy the following four "interrelated and essential elements": availability, accessibility, acceptability, and quality.[156]

1. Availability requires that "functioning public health and health-care facilities, goods and services, as well as programs, have to be available in sufficient quantity within the State party."[157]
2. Accessibility requires that the provision of health care goods, services, and access to health care facilities are not made on a discriminatory basis; that health care is physically accessible, is within safe physical reach, and is economically accessible; that poorer households are not disproportionately burdened with healthcare costs; and that information about health care is accessible to all.
3. Acceptability means that health facilities, goods and services are respectful of medical ethics and the culture of individuals.
4. Quality requires that health facilities, goods and services are scientifically and medically appropriate and of good quality.

The CESCR has also explained that Article 12.2(d) requires that the State create conditions that assure equal and timely access to appropriate mental health treatment and care.[158]

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153 "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . care and necessary social services, and the right to security in the event of . . . sickness." UDHR, *supra* note 35.

154 "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." International Covenant on Economic, Social and Cultural Rights art. 12, ¶ 1, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

155 "States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability." Convention on the Rights of Persons With Disabilities art. 25, *opened for signature* Dec. 13, 2006, A-44910 [hereinafter CRPD].

156 General Comment No. 14, *supra* note 42, at ¶ 12.

157 *Id.* at ¶ 12(a).

158 *Id.* at ¶ 12(b).

For people with mental disabilities who are deported to Jamaica, the elements of the right to health are often not met. For example, health care, goods, and services may not be physically accessible because of the high cost of transportation, or they may not be economically accessible because of the inability of deported persons to access money they earned prior to deportation coupled with the high cost of medication in Jamaica. The obstacles faced by deported persons with mental disabilities fall into three general categories: difficulties in obtaining and affording medication in Jamaica, limited access to medical records, and barriers to accessing quality medical treatment.

1. Access to Medication

"If you are mentally ill, [the cost of obtaining medication] is long term. Even if you do get a job, it's not going to cover your living costs and your medication."

Mrs. Y. Grant, Administrator, Open Arms Drop-in Centre

The amount of medication that deported persons are provided for the return to Jamaica is inconsistent at best. Deported persons and service providers reported that persons often arrive in Jamaica with no medication; others receive a few days of medication, a few weeks of medication, or, in one instance, a month's supply of medication. According to the Performance Based National Detention Standards (PBNDS), at least seven days of medication in an appropriate dosage should be provided to a deported person upon release from ICE custody.[159] Though this standard has been criticized for being inadequate,[160] even its minimum suggestions are often not being met.

Deported persons with mental disabilities often have problems obtaining medication once in Jamaica. Individuals who have a tax registration number (TRN) may be able to get medication for free or at a reduced cost.[161] However, identification, which many deported persons lack initially if not perpetually, is required to obtain the TRN.[162] Many medications are beyond the financial reach of most Jamaicans even when subsidized, running up to US$300-$400 per month.[163] As a result, for many deported persons with mental disabilities, necessary medication is not economically accessible.

159 PBNDS, *supra* note 44, at § S; *infra* Appendix E: ICE Flight Operations Unit Continuity Book.

160 Texas Appleseed Report, *supra* note 4, at 66.

161 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., *supra* note 27.

162 For more about the tax registration number and other essential Jamaican identifications, *see infra* notes 279-302 and accompanying text.

163 Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, *supra* note 80.

Confronted with the economic inaccessibility of the expensive name brand drugs to which his body is accustomed, a deported person with a mental disability may be compelled to switch to a generic counterpart that may be available in Jamaica at a lower cost. Switching between drugs can have a detrimental effect on a person's health as the body adjusts to the new drug's different side effects.[164]

Medication Recommendation: Provision of Medication Upon Deportation[165]

U.S. Immigration and Customs Enforcement (ICE) Health Service Corps should provide persons awaiting deportation with at least seven days of medication in appropriate dosages, pursuant to ICE/Enforcement and Removal Operations Medical Standards.

Medication Recommendation: Funding for Medication[166]

Congress should appropriate funding for social service providers in the receiving country as well as prisons housing deported persons with mental disabilities to ensure that medication is consistently available to deported persons for a limited period of time immediately upon arrival.

2. Access to Medical Records

"They literally come with just the clothes on their backs. No money. No medical records. Nothing. We have to improvise on whatever statement we have from them."

Nurse Joy Crooks, Administrator, Committee for the Upliftment of the Mentally Ill

Most deported persons from the United States are returned to Jamaica without their medical records.[167] As a result, mental disabilities can remain undiagnosed until some incident makes the person's condition apparent. This may further undermine a person's ability to enjoy the right to the highest attainable standard of health, as medical records are crucial to the provision of adequate medical care. Unlike the United Kingdom, which often sends a person's medical records to Jamaica prior to deportation, the United States does not typically provide such information.[168]

164 *Id.*

165 *See* Medication Recommendation 1: Provision of Medication Upon Deportation, *infra* Part 5.

166 *See* Medication Recommendation 3: Funding for Medication, *infra* Part 5.

167 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., *supra* note 27.

168 Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, *supra* note 80; Interview with Jam. Passport, Immigration and Citizenship Agency official, *supra* note 13; Interview with Jam. Nat'l Intelligence Bureau official, *supra* note 75.

However, ICE guidelines require that individuals taking prescribed psychotropic medications be transferred with sufficient documentation to allow proper monitoring and treatment of their conditions.[169]

The failure to transfer medical records means that the needs of persons with mental disabilities may remain unaddressed indefinitely where their symptoms are more subtle, or where stigma prevents them from seeking help. Even if it is apparent that a deported person has a mental disability, without a medical history psychiatrists must often spend several sessions with a patient before a diagnosis is possible.[170] Without knowledge of a person's prior prescriptions, doctors may prescribe a different medicine than the patient formerly used, resulting in harmful side effects.[171] Oswald Dawkins of the National Organisation of Deported Migrants (NODM) noted, "develop[ing] procedures to identify people with mental disabilities at the outset and ensur[ing] that they are treated appropriately" would make a noticeable difference.[172]

Medical Records Recommendation: Medical Records, Generally[173]

Upon receiving the deported person's informed consent, all of his medical records should be made available for review and analysis by medical professionals in the receiving country.

Medical Records Recommendation: Consent[174]

U.S. Immigration and Customs Enforcement should establish a process for obtaining the informed consent of persons ordered deported to release their medical records to a specified party in the receiving country, where the person ordered deported has expressed an interest in the transfer of medical records to a third party.

Medical Records Recommendation: Receipt of Medical Records in Receiving Country[175]

Where the person awaiting deportation has given informed consent to a medical record transfer, U.S. Immigration and Customs Enforcement should coordinate the receipt of a deported person's medical records by a government office, agent, or appropriate medical professional within the receiving country.

169 *Infra* Appendix E: ICE Flight Operations Unit Continuity Book.

170 *Id*.

171 *Id.*

172 Interview with Oswald Dawkins, Nat'l Org. of Deported Migrants, ***supra*** note 105.

173 ***See*** Medical Records Recommendation 1: Medical Records, Generally, ***infra*** Part 5.

174 ***See*** Medical Records Recommendation 2: Consent, ***infra*** Part 5.

175 ***See*** Medical Records Recommendation 3: Receipt of Medical Records in Receiving Country, ***infra*** Part 5.

3. The Availability and Accessibility of Medical Treatment

"People do not know where to go, and even if they do, they often do not have the money to get to the hospital."

Naketa West, Masters student in clinical psychology at the University of the West Indies at Mona

"Where there is a documented mental illness . . . it would seem of some interest to ask . . . how are you going to get the treatment you need? My understanding is that that kind of question is simply not asked."

Dr. Bernard Headley, Professor of Criminology at the University of the West Indies at Mona

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As noted above, the United States does not connect deported persons with mental disabilities to mental health professionals prior to departure or upon arrival in Jamaica. In addition, medical treatment may be unavailable or inaccessible. Specifically, Jamaica lacks a forensic mental health facility, the stigma against mental disabilities prevents some people from seeking treatment in their own neighborhoods, some individuals avoid getting treatment due to safety concerns, and there is a shortage of mental health providers.

Bellevue Hospital, the largest mental health treatment facility in Jamaica,[176] does not accept mentally disabled individuals who would require treatment in a discrete forensic unit, which would provide both mental health treatment and prison-level security.[177] Deported persons with mental disabilities who commit crimes in Jamaica are therefore commonly treated in prisons, where they are often housed among the general prison population.[178] These prisons employ

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176 The hospital serves about 800 patients with a range of mental disabilities. Out of a staff of about 780, five are psychiatrists. Interview with Bellevue Hospital senior official in Kingston, Jam. (Jan. 14, 2011); Kimone Thompson, ***Paging… the Jamaican Psychiatrist***, Jam. Observer, Jan. 30, 2011, ***available at*** http://www.jamaicaobserver.com/news/Paging----the-Jamaican-psychiatrist_8283232.

177 Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, ***supra*** note 80.

178 Researchers in this investigation were not permitted to visit Jamaica's prisons, despite seeking to work with government officials to gain access. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, who visited the prisons, found that "[t]he two main prisons (St. Catherine Adult Correctional Centre and Tower Street Adult Correctional Centre) are ancient facilities, which were built for storehousing people and are not fit for modern correctional purposes of rehabilitating and re-socializing criminal offenders. They are overcrowded, lack sanitary facilities, and any meaningful opportunities for education, work and recreation. In addition, basic amenities, such as electricity, medical treatment and the use of toilets, depend on the goodwill of warders. I also found credible complaints by prisoners of beatings by the officers." Press Release, Office of the High Comm'r for Human Rights, ***UN Special Rapporteur presents preliminary findings on his mission to Jamaica***, Feb. 19, 2010, http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9834&LangID=E.

no full time psychiatrists to treat the over 530 inmates (approximately ten to fifteen percent of whom have been deported) who have a diagnosed mental disability; instead, psychiatrists visit the prison a few days a week and see an average of fifteen patients in a four-hour period.[179] The lack of a forensic mental health facility and the inadequacy of treatment in prison may lead to problems meeting the acceptability and quality elements of the right to health.

In contrast to U.S. practices, British officials consider the absence of a discrete forensic unit in their determination of whether to deport persons with mental disabilities to Jamaica.[180] If an individual has committed a crime and has a mental disability, British officials may suspend his deportation upon a finding that Jamaica's lack of a discrete forensic mental health unit would be detrimental to his rehabilitation.[181]

In addition, when mentally disabled persons are released from Jamaica's prisons, they may experience significant gaps in continuity of care because they often are released without notification to anyone, including community clinics, despite policies in place to ensure such notification.[182]

Stigma may also prevent deported persons with mental disabilities from getting the care they need. As Mrs. Y. Grant, Administrator of the homeless shelter Open Arms Drop-in Centre, explained, although community clinics are an important resource for people for whom treatment at Bellevue Hospital is inaccessible or inappropriate, "stigma gets in the way, and sometimes if you live in a small rural area, you're not going to go to that clinic."[183] People may fear the repercussions that could ensue if members of their community learned that they suffer from a particular illness or take a certain kind of drug.[184] In order to conceal their mental disabilities, some individuals represent their prescribed psychotropic medication as pills meant to treat a stomach ailment in order to avoid detection.[185]

In other instances, nearby mental health care may not be somewhere physically safe. Malea, a woman deported from the United States who could not afford private health care, explained that she was too afraid to go to the nearest public clinic because it was in the neighborhood where opposing political party members had murdered several members of her family.[186]

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179 Interview with psychiatric researcher in Kingston, Jam. (Jan. 13, 2011).

180 Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, ***supra*** note 80.

181 ***Id.***

182 Interview with psychiatric researcher, ***supra*** note 179.

183 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., ***supra*** note 27.

184 ***Id***.

185 Interview with Captain Reuben Phillips, Dir., 2nd Chance Servs., ***supra*** note 98.

186 Interview with Malea in Kingston, Jam. (Jan. 10, 2011).

Finally, there are too few mental health workers in Jamaica. The country has about twenty-five psychiatrists across the island,[187] or less than one psychiatrist per 100,000 Jamaicans. According to one psychiatrist, Jamaica needs at least 200 psychiatrists to meet the needs of the country's mentally disabled population, both inpatients at Bellevue Hospital and outpatients who receive care at community clinics.[188]

Medication Recommendation: Oversight Over Continuity of Care[189]

Enforcement and Removal Operations (formerly known as the Office of Detention and Removal Operations (DRO)) should institute procedures to monitor the compliance of the U.S. Immigration and Customs Enforcement (ICE) Health Service Corps with the ICE/DRO Detention Standards on Medical Care, Section S: Continuity of Care.

187 Thompson, *supra* note 176.

188 *Id.*

189 *See* Medication Recommendation 2: Oversight Over Continuity of Care, *infra* Part 5.

B. THE RIGHT TO HOUSING: ACCESS TO ADEQUATE SHELTER

FOCUS The Right to Adequate Housing

The right to adequate housing is guaranteed in Article 25(1) of the Universal Declaration of Human Rights (UDHR),[190] Article 11(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR),[191] and Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD).[192]

According to the Committee on Economic, Social and Cultural Rights (CESCR), adequate housing requires:[193]

1. Security of tenure: all persons are to possess a "degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats."
2. Availability: services, materials, facilities, and infrastructure that are essential for health, security, comfort and nutrition must be available to all.
3. Affordability: costs associated with housing should not threaten or compromise the attainment of other basic needs.
4. Habitability: housing must provide inhabitants with adequate space, as well as protection from the elements, threats to health, structural hazards and disease vectors.
5. Accessibility: housing must be accessible to those entitled to it; disadvantaged groups, including the mentally disabled, must be accorded full and sustainable access to adequate housing resources and given some degree of priority consideration.
6. Location: housing must be located so that it is accessible to employment, health-care, schools, child-care, and other social facilities.
7. Cultural adequacy: housing must appropriately enable the expression of cultural identity and diversity.

The CESCR has recognized that adequate housing is integral to the realization of all economic, social and cultural rights, [194] and has said that the right to housing "should be seen not merely as 'having a roof over one's head,'" but as "the right to live somewhere in security, peace and

190 "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . housing." UDHR, ***supra*** note 35.

191 "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including . . . housing." ICESCR, ***supra*** note 154, at art. 12, ¶ 1.

192 "States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families . . . and, shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability." CRPD, ***supra*** note 155, at art. 25.

193 U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, The right to adequate housing (Art.11(1)): General Comment No. 4, ¶ 8 (a-g), U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter General Comment No. 4].

194 ***Id. at*** ¶ 1.

dignity."[195] The CESCR has also declared that the enjoyment of the right to housing cannot be subjected to any form of discrimination[196] and should be ensured to everyone regardless of income or access to economic resources.[197]

Many of the elements of the human right to adequate housing were not met for mentally disabled persons who had been deported from the United States to Jamaica, a majority of whom face enormous challenges in finding and maintaining adequate housing upon their return. The World Health Organization (WHO) reports very limited appropriate housing for mentally disabled persons in Jamaica,[198] an unfortunate reality that was confirmed by many mental health professionals.[199] Available options for deported persons typically include living with family members, in hostels or shelters, in community group homes, or in private apartments. But because of the challenges associated with each of these options, one service provider in Kingston estimated that nine out of ten deported persons with mental disabilities ultimately end up homeless.[200]

Homelessness presents a presumptive violation of the right to housing,[201] and mentally disabled deported persons in Jamaica are at high risk of homelessness due to their low socioeconomic status, the challenges in improving that status in a country with few to no employment opportunities, the significant stigma against mentally disabled and deported persons, and the improbability of finding family members willing or able to offer long-term housing, among other factors.

Housing Recommendation: Securing Housing[202]

U.S. Immigration and Customs Enforcement (ICE) should work to identify and assist with securing appropriate housing for mentally disabled persons awaiting deportation before they arrive in the receiving country. ICE should work with service providers and organizations that provide housing so as to ensure that any housing is adequately responsive to the needs of individuals with mental disabilities.

195 *Id.* at ¶ 7.

196 *Id.* at ¶ 6.

197 *Id.* at ¶ 7.

198 World Health Org., *supra* note 8.

199 *E.g.*, Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, *supra* note 80; Interview with Nurse Joy Crooks, Adm'r, Comm. for the Upliftment of the Mentally Ill, *supra* note 26.

200 Interview with Ishon Williams, Counselor, Family Unification & Resettlement Initiative, *supra* note 87.

201 *See* General Comment No. 4, *supra* note 193, at ¶ 4.

202 *See* Housing Recommendation 1: Securing Housing, *infra* Part 5.

1. Living with Family

FOCUS **"He was living on the street; things happened to him . . . ."**[203]

Paula migrated to the United States with her son Adam when he was sixteen years old. Adam went to school, held a few jobs, and joined the National Guard in Miami. Seven years ago, when Adam was twenty-three, he was deported to Jamaica because, his mother says, he held someone up in a store. His mother described him as "thirty percent not there" in terms of behavior and speech when he arrived. He tried to find work, but as soon as employers found out that he had been deported, he was not hired. Without a job to occupy his mind, his mother explained, the problems only worsened.

Signs of schizophrenia eventually emerged; his mother explained that he would hide in his closet holding a knife, talking to people he could not see, and apparently believed that people were "trying to get him." Although there was medication that could help her son, Paula said that she could not afford it. After two years of struggling with the symptoms of Adam's untreated mental illness, Adam's grandmother, who lived with them, asked Paula to find another place for him.

This put Paula in the difficult position of having to ask others to take in her son. However, Adam faced intense stigma because of his mental disability. "As soon as people know, they shy away because they don't know what he may do," Paula said. Paula tried to get him admitted to Bellevue Hospital, but they released him, claiming his symptoms were due to drug use. Adam's father got him into a facility in St. Mary's Parish, but that did not last long. Adam also stayed briefly with a friend.

Adam has been homeless on and off for the past five years. While living on the street, Adam was molested, which his mother says exacerbated his symptoms, provoking a violent outburst. Paula tried to get food to her son, but she did not have access to any support services for him. When asked about the future of her son, Paula was not optimistic. "You know he'll be on the street again. You don't know what to do. You don't know," she said.

The high cost of living in Jamaica, combined with high unemployment, discrimination, and the corresponding inability of many deported persons to contribute to household expenses, leaves many families unable to financially support an additional person.[204] The emotional burden of

203 Interview with Paula, *supra* note 89.

204 *See infra* notes 251-56 and accompanying text; *see also* Dwayne McLeod, *Goods chopped to fit pockets – Half a corned beef, soap, other items sold at shops*, Jam. Online Star, Dec. 19, 2008, *available at* http://jamaica-star.com/thestar/*20081219*/news/news1.html.

caring for a deported person with a mental disability can also be challenging.[205] As Dr. Wendel Abel of UWI Mona observed, "while family can be supportive, issues can sometimes arise when a mentally ill deportee is taken in by his or her family, as family members often cannot manage living with mentally ill deportees."[206] Although the family desires to help the deported person, they often find themselves poorly equipped to care for them on a long-term basis.

For persons who left Jamaica many decades ago, perhaps even as young children, it can be difficult to try to reconnect with family members with whom they have little familiarity. A PICA official observed that deported women are often more successful than deported men in reconnecting with their families; "women may have family to return to because they keep in touch, but when a man walks out, he walks out on his own."[207] As Oswald Dawkins, co-founder of the NODM, explained, "I was kind of fortunate because my family was here. Most people only have distant relatives and are only welcome if they're getting money sent from overseas. When the money dries up, you start getting the looks."[208]

Some families may also be reluctant to house a deported relative because of the associated stigma towards deported individuals. Andre Simpson of the NODM, who does not have a mental disability, shared the experience of staying with his aunt when he was first deported. Although she initially opened her house to him, he was soon forced to leave: "At first everything was okay. After the first month she started giving me looks because I was deported. Whispering, gossiping . . . that in itself can make you stress, go crazy. She ended up kicking me out," he said.[209] Andre then stayed with a cousin, but the situation was similar to that with his aunt. He eventually found his own apartment, but expressed his belief that "housing is definitely a major issue" for deported persons.[210] Ultimately, even if a deported person is able to rely on his or her family for housing assistance when he arrives, there is no telling how long the hospitality will last.

Despite these challenges, living with a family member is often a deported person's best hope. However, this option is not available to persons without family members or those with family who are unable or unwilling to take them in. For these individuals, the alternatives—beyond the street—include hostels, shelters, community group homes, and private apartments.

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205 *See, e.g.*, Kimone Thompson, *Living with mental illness – A mother's tale*, Jam. Observer, Feb. 13, 2011, *available at* http://www.jamaicaobserver.com/news/Living-with-mental-illness-A-mother-s-tale_8351092#ixzz1E7sPV9gQ ("[The worst part of this is] the disappointment of having your eldest child not functioning and not contributing positively to society; of him not being happy; of him not having friends; of him never knowing the joy of having his own children.").

206 Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, *supra* note 80.

207 Interview with Jam. Passport, Immigration and Citizenship Agency official, *supra* note 13.

208 Interview with Oswald Dawkins, Nat'l Org. of Deported Migrants, *supra* note 105.

209 Interview with Andre Simpson, Nat'l Org. of Deported Migrants, in Kingston, Jam. (Jan. 10, 2011).

210 *Id.*

2. Hostels and Shelters

Hostels and shelters are low- to no-cost, short- to medium-term housing options for deported persons who have been returned to Jamaica. The conditions at hostels and shelters, while better than being on the street, frequently do not meet the standards of habitability, accessibility, or availability of services or infrastructure that are key components of the right to adequate housing.

Both shelters and hostels have rules limiting accessibility. For example, some hostels only admit male clients, some shelters only allow male clients to stay overnight yet allow women during the day, while one hostel only admits deported women. Hostels and shelters may also limit how long someone can stay, may charge for stays longer than thirty days,[211] and have limited capacity.[212] Sometimes it can be harder for deported persons who initially stayed with family to access a hostel or shelter.[213]

The conditions at some hostels and shelters are very basic and provide for no more than the most rudimentary needs of the persons staying there.[214] The Marie Atkins Shelter in Kingston is composed of one large, dormitory-style room with bunk-beds. If the shelter's beds are full, individuals must sleep on the floor or benches in a covered outdoor space. Due to a lack of privacy, theft is not uncommon. Additionally, according to one deported person, food portions are meager and of low quality and nutritional content.[215] The Open Arms Drop-in Centre provides slightly more comfortable accommodations and has a day program that provides employment services and skills training.[216] However, the shelter is surrounded by a cage-like fence and is located in a dangerous neighborhood in downtown Kingston.[217]

Due to the inaccessibility of permanent, affordable housing, some individuals may have to remain for extended periods of time.[218] However, hostels and shelters are not intended to replace permanent housing, and they never have enough spots to satisfy demand.[219] Eventually, those individuals unable to stay at hostels and shelters end up on the streets.[220]

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211 Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, ***supra*** note 80.

212 Interview with Mrs. Flowers, Adm'r, Open Heart Ministries, in Montego Bay, Jam. (Jan. 11, 2011) (e.g., Refuge of Hope Shelter in Montego Bay accommodates thirty individuals).

213 Interview with Captain Reuben Phillips, Dir., 2nd Chance Servs., ***supra*** note 98.

214 Interview with St. Rachel Ustanny, Exec. Dir., Hibiscus, ***supra*** note 138.

215 Interview with William in Kingston, Jam. (Jan. 12, 2011).

216 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., ***supra*** note 27.

217 *Id.*

218 Interview with William, *supra note 215 (noting that he lived at Marie Atkins Shelter for over a year and a half).*

219 Interview with Nurse Joy Crooks, Adm'r, Comm. for the Upliftment of the Mentally Ill, ***supra*** note 26.

220 Interview with Marleen Brown, Outreach Coord., Family Unification & Resettlement Initiative, ***supra*** note 87.

FOCUS Community Group Homes

Community Group Homes is a group of hostels supported by the United Kingdom in partnership with the Jamaican government.[221] It provides small meals, medication, and sleeping accommodations on a longer-term basis, and as such, offers a more permanent housing option for deported persons with mental disabilities—provided that they have the substantial financial resources necessary to afford group home residence.[222] While the first month at Community Group Homes is free, after that these homes cost approximately US$500 per month,[223] a cost far out of reach for most in Jamaica where the gross national income per capita is US$5,020 per year, or about US$418 per month.[224] As a result, longer-term stays in Community Group Homes generally require outside financial support, for example from family members.[225] For those without outside financial support, Community Group Homes likely does not meet the affordability element of the right to adequate housing.

Community Group Homes provides some counseling and other mental health services to residents. However, several residents reported that the hostels feel isolating and institutional, and do not offer much privacy. Randall, a paranoid schizophrenic, who was deported from the United States and has spent the past two years at Community Group Homes, stated that he is "still waiting for the date of release, but it hasn't come yet."[226] Clayton, also a paranoid schizophrenic deported from the United States, who has been living at Community Group Homes for the past eight years, said, "I just want to have a wife, a car, a house, a job, and to live a peaceful and relaxing life, but I'm far away from that now."[227] Finley, who has been diagnosed with paranoid schizophrenia, was deported from the United Kingdom in November 2010, now lives at Community Group Homes. He said, "I believe I'm still in prison. I can't go anywhere. You have to do what you're told. I was more free in prison."[228]

221 Interview with British High Comm'n officials, ***supra*** note 82.

222 Interview with Mrs. Flowers, Adm'r, Open Heart Ministries, ***supra*** note 212.

223 Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, ***supra*** note 80.

224 ***Jamaica Statistics***, UNICEF, http://www.unicef.org/infobycountry/jamaica_statistics.html#79 (last visited Mar. 27, 2011).

225 Interview with Clayton, ***supra*** note 118; Interview with Darell in Kingston, Jam. (Jan. 14, 2011).

226 Interview with Randall, ***supra*** note 116.

227 Interview with Clayton, ***supra*** note 118.

228 Interview with Finley, ***supra*** note 117.

3. Private Apartments

The final housing option available to some deported persons with mental disabilities is renting a private home or apartment. However, the cost of renting an apartment can start at J$15,000 (US$174) per month, which is a substantial portion of the average salary in Jamaica and completely out of reach for an unemployed person without significant outside financial assistance.[229] Therefore, like Community Group Homes, this option is also only available to a small number of deported persons with mental disabilities and poses a violation of the affordability element of the right to adequate housing.[230]

Even beyond cost, discrimination against deported persons with mental disabilities also limits the private housing options that are available. As noted above, states must "promote the realization of [the right to adequate housing] without discrimination on the basis of disability,"[231] and "enjoyment of this right must . . . not be subject to any form of discrimination."[232] Unfortunately, this is not always the case. In one incident, a mentally disabled deported person disturbed the other tenants of the building in which apartments had been specially rented out by an international organization to house recently deported persons with mental disabilities. Following the disturbance, the landlord decided never to rent to deported persons again.[233] Other professionals said that, due to cost and stigma, deported persons with mental illness were only able to rent in certain neighborhoods, many of which carry reputations as being dangerous, poverty-stricken locations, which subjects the person to additional stigma.[234] Additionally, many persons with mental disabilities are in need of professional services and support to maintain their mental health, and living alone in private housing can limit the access that someone has to such services. In other words, for mentally disabled deported persons in Jamaica, private accommodations rarely satisfy the accessibility element of the right to housing.

Housing Recommendation: Funding for Independent Housing[235]

Congress should appropriate funding for the purpose of promoting reintegration by providing limited financial assistance to deported persons seeking permanent housing.

229 Interview with Captain Reuben Phillips, Dir., 2nd Chance Servs., ***supra*** note 98.

230 Interview with Andre Simpson, Nat'l Org. of Deported Migrants, ***supra*** note 209.

231 CRPD, ***supra*** note 155, at art. 28.

232 General Comment No. 4, ***supra*** note 193, at ¶ 6.

233 Interview with international organization official, ***supra*** note 120.

234 Interview with Marleen Brown, Outreach Coord., Family Unification & Resettlement Initiative, ***supra*** note 87.

235 ***See*** Housing Recommendation 2: Funding for Independent Housing, ***infra*** Part 5.

C. THE RIGHT TO WORK: FINDING EMPLOYMENT IN JAMAICA

"[When it comes to jobs,] a deported person is . . . starting from zero."[236]

St. Rachel Ustanny, Executive Director, Hibiscus

FOCUS The Right to Work

The right to work, including the right to equal pay for equal work, is guaranteed in Article 23 of the Universal Declaration of Human Rights (UDHR),[237] Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),[238] Article 8(3)(a) of the International Covenant on Civil and Political Rights (ICCPR),[239] Article 27 of the Convention on the Rights of Persons with Disabilities (CRPD),[240] and Article 5(e)(i) of the Committee on the Elimination of Racial Discrimination (CERD),[241] among other places.[242]

As explained by the Committee on Economic, Social and Cultural Rights, the right to work means decent work and work that allows workers to support themselves.[243] In order to exercise the right to work, the following interdependent and essential elements must be met: availability, accessibility, acceptability and quality.

1. Availability requires that State parties have "specialized services to assist and support individuals in order to enable them to identify and find available employment."[244]

236 Interview with St. Rachel Ustanny, Exec. Dir., Hibiscus, *supra* note 138.

237 UDHR, *supra* note 35, at art. 25, ¶¶ 1-2.

238 "The States Parties to the present Covenant recognize the right to work . . . and remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind." ICESCR, *supra* note 154, at art. 6, 7 ¶ a(i).

239 "No one shall be required to perform forced or compulsory labour." International Covenant on Civil and Political Rights, art. 8(3)(a), *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 17 [hereinafter ICCPR].

240 "States Parties recognize the right of persons with disabilities to work, on an equal basis with others." CRPD, *supra* note 155, at art. 27(1).

241 "The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration." International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(i), *opened for signature* Sept. 28, 1966, 660 U.N.T.S. 195.

242 The right to work is also recognized in articles 11, 25, 26, 40, 52, and 54 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *opened for signature* Dec. 18,1990, U.N. G.A. Res. 45/158 (1990).

243 U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, The Right to Work, CESCR General Comment No. 18, ¶ 7, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006) [hereinafter General Comment No. 18].

244 *Id.* at ¶ 12(a).

2. Accessibility means the labor market must be open to everyone under the State party's jurisdiction. To be open to everyone, ICESCR Article 2(2), and Article 3 prohibit discrimination on the grounds of physical or mental disability, social or other status, among others.[245] Work must also be physically accessible and workers must be able to seek, obtain, and impart information on the means of gaining access to employment.[246]
3. Acceptability and quality mean that workers have the right to just and favorable conditions of work.[247]

The CRPD also requires states to take steps to ensure that persons with disabilities have effective access to general technical and vocational guidance programs.[248]

The elements of the right to work were rarely met for persons with mental disabilities who were deported to Jamaica. Work is not readily available to deported persons with mental disabilities because Jamaica lacks adequate support services to train, certify, and place them. When people have been out of the country for years, as many deported persons have been, the difficulties of finding a job are multiplied. From the differing form and content of a resume, to learning how to solicit an employer, to getting references, deported persons essentially must start from scratch and learn the job search process as it operates in Jamaica. Additionally, the stigma attached to deportation and to persons with mental disabilities creates significant barriers to the accessibility of the labor market. Finally, when deported persons with mental disabilities are able to find work, it is often informal, increasing the risk of exploitation and unequal wages.

1. Certification and Training

Deported persons with mental disabilities in Jamaica face a multitude of employment challenges due to inadequate support services. Many Jamaican jobs require official certification of skills, even if individuals already have a skills certification from the United States. Without certification, workers may be subject to exploitation. However, in Jamaica, access to certification programs and training to develop employable and certifiable skills is not readily available to everyone.

245 U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, The Right to Work, CESCR General Comment No. 12(b)(i), ¶ 7, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006).

246 General Comment No. 18, ***supra*** note 243, at ¶ 12(b)(ii, iii).

247 ***Id.*** at 12(c).

248 States parties shall "[e]nable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training." CRPD, ***supra*** note 155, at art. 27(1)(d).

The Human Employment and Resource Training (HEART) Trust/National Training Agency (NTA) is a program that provides skills training and certification of certain skills for the Jamaican workforce. While the overall training and certification programs at HEART are available to any Jamaican, the cost associated with the program can be prohibitive for deported individuals who have limited access to money. This presents a major barrier to the realization of the right to work. To address this issue, the United Kingdom funds a program at HEART to certify the skills of those persons it deports.[249] The U.K.-funded program is not available to persons deported from the United States, and is one major disparity in services available to deported persons from the United Kingdom versus the United States.

In addition, while HEART can benefit many Jamaicans, its training and certification programs are not always available to persons with intellectual[250] or learning disabilities. Reid was only seven years old and had just been diagnosed with dyslexia when he left Jamaica for the United States.[251] Reid's school did not offer any accommodations for his learning disability, and he ended up dropping out of school around age fourteen.[252] Eventually, Reid was deported to Jamaica. His father took him to HEART, but Reid he could not enroll until he completed remedial classes. However, Jamaican remedial programs do not have the special education components necessary to accommodate Reid's learning disability.[253] Although Reid could get jobs doing carpentry and plumbing, he could not get certified and experienced difficulties keeping long-term employment because of his disability.[254] Reid has a strong desire to learn and to work, but the support services Reid needs are simply unavailable.[255] According to his aunt, "he's not moving forward. He's stuck."[256]

Deported persons who are qualified to perform a skill or trade in the United States or the United Kingdom need to have that skill or trade recognized in Jamaica in order to find steady work.[257] When a person is not certified according to Jamaican standards, that person may only find informal employment. As a result, that person may be forced to accept low or irregular pay. Informal employment also lacks legal safeguards against exploitation. Mrs. Y. Grant, the Administrator of a homeless shelter in Kingston, explained, "[deported persons] are going to be exploited, but if they are mentally ill . . . very often, they're not going to get paid . . . . If they're supposed to get J$1,500 [US$18], they give them J$200 [US$2.40]. That's exploitation."[258]

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249 Interview with British High Comm'n officials, ***supra*** note 82.

250 The Jamaican Association on Intellectual Disabilities offers a small work skills program in conjunction with HEART; however, the Interim Executive Director doubted adult deported persons with mental disabilities would be able to access it. Interview with Miss Rodriguez, Interim Exec. Dir., Jam. Ass'n on Intellectual Disability, in Kingston, Jam. (Jan. 12, 2011).

251 Interview with family member of Reid, in Kingston, Jam. (Jan. 13, 2011).

252 *Id.*

253 *Id.*

254 *Id.*

255 *Id.*

256 *Id.*

257 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., ***supra*** note 27.

258 *Id.*

If certification programs and support services were more readily available in Jamaica for deported persons with mental disabilities, the acceptability and quality requirements of the right to work would be more readily met as well.

Employment Recommendation: Formal Recognition of Training and Education[259]

The U.S. government, through U.S. Immigration and Customs Enforcement, should provide access to information to persons in detention regarding any employment certification requirements in the receiving country. Logistical and financial support should be provided to reduce the barriers that mentally disabled persons face in obtaining such certification. Deported persons who have attained vocational or any other type of educational or professional training or certification in the United States should be provided with the means to have these skills formally recognized, with the goal of enabling them to find work in that trade, vocation, or profession in the receiving country.

If a deported person does not have a skill that is recognized by the certification system, there are job-training opportunities available in Jamaica that are largely funded by private organizations and the United Kingdom. These options, while helpful, are limited, and are not available to everyone. Deported persons from the United Kingdom are the sole intended benefactors of U.K.-funded programs (though in some instances deported persons from the United States may access these programs as well), and other programs, such as those provided by the Salvation Army and Hibiscus, are only available to a subset of the population as well.

The Salvation Army's drug rehabilitation program, supported by the United Kingdom, provides housing, substance abuse counseling, job training, and employment services to twenty Jamaicans at a time.[260] While this program accepts deported persons, it is not specifically designed for that population.[261] After participants graduate from the primary substance abuse treatment program, the Salvation Army tries to employ them for three to six months, paying the average Jamaican wage, which is about J$4,000 (US$48) per week.[262] While this program works well for those who can take advantage of it, the program is not available to individuals dually diagnosed with severe mental disabilities and drug dependency, and there is a permanent waiting list.

Hibiscus, another organization funded by the United Kingdom, is a resettlement and reintegration service for deported women and children. In addition to temporary housing, food, clothing, textbook rentals for children, and referral services, Hibiscus offers skills training for up to twenty-five deported women in commercial garment production via the Joint Migration and

259 *See* Employment Recommendation 1: Formal Recognition of Training and Education, *infra* Part 5.

260 Interview with Salvation Army official in Kingston, Jam. (Jan. 13, 2011).

261 *Id.*

262 *Id.*

Development Initiative (JMDI)[263] and the European Union (EU).[264] According to the Executive Director of Hibiscus, the major barrier deported women face in accessing the organization's skills training program is transportation to the program itself.[265] Many women who do not live within walking distance of Hibiscus simply cannot afford the cost of transportation in order to attend the program regularly.[266]

The EU-United Nations Development Program Reintegrating Deported Migrants Project provides workshops to point deported persons toward available skills training programs. The project does not recruit persons with mental disabilities because, with the "widespread presumption in Jamaican society among employers . . . that mentally [disabled] people cannot function productively,"[267] recruiting mentally disabled deportees to these workshops is perceived as a risk to the success of the project – and therefore to future funding.[268]

With few job-training options available, deported persons with mental disabilities are faced with sparse options for reintegration into the Jamaican workforce.[269] Dr. Bernard Headley, the Director of the project, was hard-pressed to think of a single sector that would employ mentally disabled individuals.[270] He explained that even beyond stigma, the support systems required for employment are simply absent in Jamaica.

Many people advocated for additional vocational training programs and other support systems for mentally disabled and deported persons. Professor Frederick W. Hickling, a practicing psychiatrist and retired professor in the Faculty of Medical Sciences at UWI Mona, opined that a humane system on both the U.S. side and on the Jamaican side with communication between the two is essential to facilitating effective reintegration of deported persons. He believes that a humane system necessitates rehabilitation services that include vocational rehabilitation, because people have a right to work in decent employment.[271] Making employment training universally available would be a significant step in the realization of the right to work.

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263 JMDI is a program run by the European Commission and the United Nations, "to support civil society organizations and local authorities seeking to contribute to linking migration and development." ***About the JMDI***, Migration for Development, http://www.migration4development.org/content/about-jmdi (last visited Mar. 27, 2011).

264 Interview with St. Rachel Ustanny, Exec. Dir., Hibiscus, ***supra*** note 138.

265 ***Id.***

266 ***Id.***

267 E-mail from Bernard Headley, Professor in Faculty of Soc. Scis., Sociology, Psychology, and Soc. Work, Univ. of the W. Indies at Mona, to authors (Mar. 10, 2011) (on file with authors).

268 ***Id.***; Telephone Interview with Bernard Headley, Professor in Faculty of Soc. Scis., Sociology, Psychology, and Soc. Work, Univ. of the W. Indies at Mona (Jan. 25, 2011).

269 Additional skills training programs are available in Jamaica, but there is an associated fee. While persons deported from the United Kingdom can receive funding for the training program, persons deported from the United States are ineligible for such funding. ***See*** Interview with international organization official, ***supra*** note 120.

270 Telephone Interview with Bernard Headley, Professor in Faculty of Soc. Scis., Sociology, Psychology, and Soc. Work, Univ. of the W. Indies at Mona, ***supra*** note 268.

271 Interview with Professor Frederick W. Hickling, Psychiatrist, in Kingston, Jam. (Jan. 10, 2011).

Employment Recommendation: Vocational and Technical Training[272]

The United States, through the U.S. Agency for International Development (USAID) and diplomatic missions, should assist deported persons with mental disabilities in obtaining local vocational and technical training if they do not yet have training for which they could obtain employment. USAID, the appropriate U.S. Embassy or consulate, and local NGOs should collaborate to support programs that train and educate deported persons to perform particular skills in the local workforce. Such programs should be tailored to the needs of the target population; for example, they should provide remedial classes for persons with mental disabilities as needed, and should be located in a safe and physically accessible area.

2. Stigma-Based Discrimination

The ICESCR prohibits discrimination on numerous grounds, including physical or mental disability and social or other status.[273] Because of discrimination resulting from the significant stigma attached both to deportation and mental disabilities, however, the labor market in Jamaica is largely inaccessible to deported persons with mental disabilities.

Many deported persons who have lived in the United States have American accents. In Jamaica, an American accent is often perceived as an indication that the person has been deported, which triggers the significant stigma that exists against deported persons.

Nurse Joy Crooks, the Administrator of the Committee for the Upliftment for the Mentally Ill (CUMI), an organization that provides community-based outreach to the homeless, mentally disabled of Montego Bay, related the difficulty this population faces in securing employment. She has asked favors of people she knows personally in order to help clients surmount the barriers of accessibility of the labor market brought on by stigma against persons with mental disabilities.[274] Often, however, the employer is simply unable to see past the stigma of mental disability and is unwilling to hire the individual. When contemplating the possibility of a deported person with a mental disability seeking employment without CUMI's assistance, Nurse Crooks remarked, "Oh Lord, I hate to think . . . there's a stigma because you've got mental illness, you're a 'madman,' and there's a stigma because you're a deportee as well. It's assumed that you've done something wrong."[275]

For deported persons and particularly for those with mental disabilities, stigma is a significant and debilitating barrier to realization of the right to work.

272 *See* Employment Recommendation 2: Vocational and Technical Training, *infra* Part 5.

273 ICESCR, *supra* note 154, art. 2(2).

274 Interview with Nurse Joy Crooks, Adm'r, Comm. for the Upliftment of the Mentally Ill, *supra* note 26.

275 *Id*.

Employment Recommendation: Obtaining Employment[276]

The United States, through the U.S. Agency for International Development and diplomatic missions, should assist deported persons with mental disabilities in finding employment in the country to which they are returned. This could be accomplished by building relationships with local business, and/or by providing funding or other resource support to organizations that assist deported and mentally disabled persons obtain employment and adjust to the local work culture.

FOCUS Assistance Starting a Business

If a person returns to Jamaica via a U.K.-funded program of the International Organization for Migration (IOM),[277] that person has access to grant money to start a small business.[278] IOM has pre-made business plan worksheets that help people understand how to start a viable business. For some businesses, the person needs to develop a business plan and thereby demonstrate to IOM that they have thought the business through before they receive the grant money. Because the United States does not fund such a program through IOM, the organization's assistance with starting a business is not available to deported persons from the United States.

276 *See* Employment Recommendation 3: Obtaining Employment, *infra* Part 5.

277 The International Organization for Migration "works to help ensure the orderly and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people." *About IOM*, Int'l Org. for Migration, http://www.iom.int/jahia/Jahia/about-iom/lang/en.

278 Interview with international organization official, *supra* note 120.

THE IMPORTANCE OF IDENTIFICATION

"Without an ID here, you can't do anything."[279]

Everton Tracey, 2nd Chance Services

Proper forms of identification are crucial in Jamaican society. Many deported persons arrive in Kingston without adequate identification, or the means to obtain it, which poses numerous challenges. Without identification, a deported person cannot open a bank account, get a permanent job, access social services (such as job training), and ultimately cannot reintegrate. As Mrs. Y. Grant, the Administrator of a homeless shelter in Kingston, explained, "imagine, as a person, you know who you are, but no one in the country knows who you are."[280]

For many deported persons who traveled to the United States at a young age, birth certificate registration requirements and processes result in identification difficulties upon arrival.[281] Without a birth certificate, authorities are sometimes forced to "re-document" a deported person.[282] One deported woman interviewed said that she was unable to locate her birth certificate, applied for re-documentation, but did not receive a birth certificate, even after paying J$3,000 (US$35).[283] "In Jamaica, they take your money and it takes a long time," she said.[284]

Without a birth certificate, deported persons are unable to access employment, social, and education assistance programs. One such program requiring birth certificates is the Programme of Advancement Through Health and Education (PATH), which is "a conditional cash transfer (CCT) programme funded by the Government of Jamaica and the World Bank . . . aimed at delivering benefits by way of cash grants to the most needy and vulnerable in the society."[285] PATH,

279 Interview with Everton Tracey, Program Manager, 2nd Chance Servs., *supra* note 100.

280 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., *supra* note 27.

281 *Id.*

282 *Id.*; Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, *supra* note 80.

283 Interview with Alice, *supra* note 121.

284 *Id.*

285 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., *supra* note 27; *PATH*, Ministry of Labour and Soc. Sec. (July 9, 2010), http://www.mlss.gov.jm/pub/index.php?artid=23. The Frequently Asked Questions page explains that the following documents are needed when a person goes to apply for PATH:

- Birth Certificate or other proof of age for the family head
- Picture identification for the family head
- Birth certificates for all children under age 1 who live in the household
- Birth certificates or other proof of age for adults 60 and over who live in the household.

a combination of three former income support programs, is Jamaica's major social safety net program for children and adults.[286] Similarly, birth certificates are required for HEART programs, described above, which assist deported persons in becoming certified to work in various fields.[287] Without a birth certificate, a deported person may be unable to get a "proper job," and instead may be forced to accept informal employment for low, irregular wages.

FOCUS **Birth Certificates: The Canadian Approach**

In Canada, persons to be deported to Jamaica receive their birth certificates while still in detention.[288] The Canadian government requires that the Jamaican government send *two copies* of a deported person's birth certificate prior to deportation: one copy to confirm the nationality of the deported person, and a second copy to give to the deported person.[289]

Most deported persons from the United States and the United Kingdom arrive in Jamaica without a passport.[290] As the Administrator of a homeless shelter in Kingston explained, "when [deported persons] come to Jamaica, they have no identification aside from the paper[291] they get to travel with. They are nonpersons when they get to Jamaica. We [have] nothing legally to prove you exist."[292] Without a passport, deported persons can face difficulties getting through immigration at the airport in Kingston, and can even be accused of not being Jamaican.

Ms. Díaz, who was deported in 2005, explained the difficulty that she had trying to get through Immigration at the Kingston airport with no passport or other documentation to prove her Jamaican nationality. Due to her surname, the immigration officer questioned her nationality: "Well, Ms. Díaz, we don't know if you're from Jamaica, or maybe you're from Cuba." Ms. Díaz needed to call her mother to bring her expired passport to the airport, but explained, "I had no phone—nothing at all." Ultimately, she borrowed a phone from a female airport custodian to contact her mother, who brought her expired passport to get Ms. Díaz through immigration.

PATH Frequently Asked Questions, Ministry of Labour and Soc. Sec. (July 9, 2010), http://www.mlss.gov.jm/pub/index.php?artid=59.

286 Dan Levy & Jim Ohls, *Evaluation of Jamaica's PATH Program: Methodology Report*, Mathematica Policy Research, Inc. 6 (2003), http://www.mathematica-mpr.com/publications/PDFs/evaljamaica.pdf.

287 *Chart Your Career: Important Docs*, Heart-NTA.org, http://cardef.heart-nta.org/chartyourcareer.aspx# (last visited Feb. 13, 2011) (listing "Birth Certificate" in a list of "documents that should accompany your application").

288 Interview with Captain Reuben Phillips, Dir., 2nd Chance Servs., *supra* note 98.

289 *Id.*

290 Interview with Jam. Nat'l Intelligence Bureau official, *supra* note 75.

291 The travel document that deported persons are given during their deportation is not a document with any legal standing in Jamaica, and cannot be used for identification purposes. Interview with Jam. Passport, Immigration and Citizenship Agency official, *supra* note 13.

292 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., *supra* note 27.

In order to work, deported persons also need to register for a Tax Registration Number (TRN), which is "a unique nine-digit identification number assigned to each individual taxpayer."[293] While there is no fee to apply for a TRN, individuals must submit a passport, driver's license, or a photo ID with a certified copy of the birth certificate.[294] The process can take up to a month.[295] The TRN is required in order to access a number of social services, such as health services, business services, and even the ability to receive funds from Western Union.[296] The process is challenging for persons with mental disabilities, even those who are not deported persons, because of the costs and complicated processes involved.[297]

The time and cost of acquiring a birth certificate, passport, and TRN can take three months and cost up to J$5,000 (US$59);[298] in some instances, it has taken Open Arms Drop-in Centre eighteen months to assist deported clients in getting these documents.[299] Other identification documents can take additional time and money. A driver's license costs J$4,000-$8,000 (US$47-$94).[300] Documents such as the National Insurance Registration Card and the National Elector Card are easier to get, but require a birth certificate and/or a TRN.[301]

Brian, who was living at Community Group Home, stated, "I don't have no identification. I need a birth certificate. But, if you have no income . . . ." He continued, "here, they give us information of whereabouts for the birth certificate, [TRN], job placement help. But, like I said, you need money [to get a birth certificate], and you need identification to get a job."[302] Brian had succinctly summarized the chicken-and-egg problem that so many deported persons face: he needed identification to get a job, but he could not acquire identification without money.

Communication and Preparation Recommendation: Identification[303]

U.S. Immigration and Customs Enforcement (ICE) should return an individual's passport, birth certificate, and/or personal identification immediately following the issuance of a removal order, or as soon as is practicable thereafter. At no time should ICE retain the personal identification documents of a person being deported.

293 *Tax Registration Number*, Tax Admin. Jam., http://www.jrs.gov.jm/home_template.php?page=TaxpayerRegistrationNumber (June 11, 2010).

294 *Id.*

295 Interview with Everton Tracey, Program Manager, 2nd Chance Servs., *supra* note 100.

296 Interview with Dr. Wendel Abel, Univ. of the W. Indies at Mona, *supra* note 80.

297 *Id.*

298 Interview with Everton Tracey, Program Manager, 2nd Chance Servs., *supra* note 100.

299 Interview with Mrs. Y. Grant, Adm'r, Open Arms Drop-in Ctr., *supra* note 27.

300 Interview with Everton Tracey, Program Manager, 2nd Chance Servs., *supra* note 100.

301 *Id.*

302 Interview with Brian, *supra* note 69.

303 *See* Communication and Preparation Recommendation 5: Identification, *infra* Part 5.

D. THE RIGHT TO BE FREE FROM STATE SANCTIONED DISCRIMINATION, VIOLENCE, AND ABUSE

"If a person is attacked by the police, whether mentally ill or not, there is basically no recourse."

Dr. J. Carolyn Gomes, Executive Director of Jamaicans for Justice

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FOCUS **The Right to Freedom from Exploitation, Violence, and Abuse**

The right to be free from exploitation, violence, and abuse is guaranteed in Article 16(1) of the Convention on the Rights of Persons with Disabilities (CRPD).[304]

This provision is linked to the overall prohibition of any form of cruel or inhuman or degrading treatment or punishment. Notably, it seeks to avoid the distinction sometimes made in international human rights law between public and private forms of violence and instead prohibits all forms of violence. The CRPD prohibition includes, but is not limited to: "physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual and economic exploitation and abuse, abandonment and harassment."[305]

The Prohibition of Cruel, Inhuman or Degrading Treatment or Punishment

The prohibition of cruel, inhuman or degrading treatment or punishment is contained in Article 7 of the International Covenant on Civil and Political Rights (ICCPR).[306] Cruel, inhuman or degrading treatment or punishment means "the infliction of pain or suffering without purpose or intention and outside a situation where a person is under the de facto control of another."[307] Degrading treatment or punishment can by caused by the humiliation of the victim without causing severe pain or suffering.[308]

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304 "States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse." CRPD, *supra* note 155, at art. 16(1).

305 Marianne Schulze, *Understanding the UN Convention on the Rights of Persons with Disabilities,* Handicap Int'l 103 (2010), http://hrbaportal.org/wp-content/files/1286466464hicrpdmanual.pdf.

306 "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." ICCPR, *supra* note 239, at art. 7.

307 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Rep. of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 60, U.N. Doc. A/HRC/13/39 (Feb. 9, 2010) (by Manfred Nowak).

308 *Id.*

State parties must "afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by Article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity."[309]

According to the Human Rights Committee, the treaty body that oversees compliance with the ICCPR, State Parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their expulsion.[310]

Articles 2 and 16 of the Convention Against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment also provide protection to all who have undergone harmful treatment by state actors or with state acquiescence.

The Principle of Non-Refoulement

The principle of *non-refoulement* is contained in Article 33 of the 1951 Refugee Convention[311] and in Article 3 of the CAT.[312]

The principle of *non-refoulement* under the 1951 Refugee Convention prescribes that "no refugee should be returned in any manner whatsoever to any country where he would be at risk of persecution."[313]

The CAT extends the same protection against *refoulement* when there are substantial grounds to believe that the state would commit prohibited acts against the person upon return.

Anecdotal evidence and reports from non-governmental organizations suggest that mentally disabled deported persons are vulnerable to violations of the prohibition against state-sanctioned discrimination, violence, and abuse.[314] The risk of violence and discrimination is posed both by law enforcement and private actors, at times with the acquiescence of the state.[315]

309 United Nations Human Rights Comm., International Covenant on Civil and Political Rights General Comment No. 20, ¶ 2 (Mar. 10, 1992).

310 *Id.* at ¶ 9.

311 "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." United Nations Convention Relating to the Status of Refugees, art. 33, ***opened for signature*** July 28, 1951, 189 U.N.T.S. 150.

312 "No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, ***opened for signature*** Dec. 10, 1984, 1465 U.N.T.S. 85.

313 Guy S. Goodwin-Gill, ***Convention Relating to the Status of Refugees***, United Nations Audiovisual Library of Int'l Law 4 (2008), ***available at*** http://untreaty.un.org/cod/avl/ha/prsr/prsr.html.

314 Interviewees raised the risk of state-sanctioned discrimination, violence, and abuse against mentally disabled deported persons as a barrier to reintegration. The research team did not have an opportunity to conduct a comprehensive inquiry of the issue; however, it merits an in-depth exploration.

315 Press Release, Office of the High Comm'r for Human Rights, UN Special Rapporteur presents prelimi-

Service providers, family members, and deported persons described instances of violence or threatened violence toward homeless individuals and persons with mental disabilities. Miss Rodriguez, the Interim Executive Director of the Jamaican Association for Intellectual Disabilities, explained, "If a deportee were to come back that was intellectually disabled and there was no family to take care of them, I expect that they would be on the streets. They would be raped. They would be used as somebody's pillow. That would definitely happen. I've seen it happen. I've seen it happen to some of our graduates who end up on the streets."[316] The mother of a mentally disabled deported person said that her son was molested while living on the street.[317] One deported homeless shelter resident reported being assaulted seven times.[318] A mentally disabled Community Group Homes resident reported being called a "batty boy" in the street. He explained that "batty boy" is a derogatory term for a gay man, and said, "they kill those types out here. They just killed one recently."[319]

Nancy M. Anderson, the Executive Director of the Independent Jamaican Council for Human Rights, sat on the government commission that examined habeas petitions stemming from a state of emergency in Jamaica in May 2010. During that emergency, many deported persons were arrested and detained. She explained that the police had no reasonable suspicion to charge certain individuals, but justified their actions by noting that the person had been deported.[320]
Dr. J. Carolyn Gomes, the Executive Director of Jamaicans for Justice, a volunteer civil rights organization that works to promote access to justice within Jamaica, relayed the story of Rasheed, a mentally disabled Jamaican. Rasheed's grandmother showed the police his picture and asked them to transport him to Bellevue Hospital for treatment. The police instead suggested that she put rat poison in his food. The police ended up shooting and killing Rasheed as he ran away from them.[321] This story is one of several examples of discrimination[322] and extrajudicial killings by police against mentally disabled individuals.[323]

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nary findings on his mission to Jamaica (Feb. 19, 2010), ***available at*** http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9834&LangID=E.

316 Interview with Miss Rodriguez, Interim Exec. Dir., Jam. Ass'n on Intellectual Disability, ***supra*** note 250.

317 ***See supra*** note 203 and accompanying text.

318 Interview with William, ***supra*** note 215.

319 Interview with John, ***supra*** note 1.

320 Interview with Nancy M. Anderson, Exec. Dir., Indep. Jam. Council for Human Rights, in Kingston, Jam. (Jan. 14, 2011).

321 Interview with Dr. J. Carolyn Gomes, Dir., Jamaicans for Justice, ***supra*** note 28.

322 Nancy M. Anderson also mentioned that mentally disabled persons may be subject to arbitrary arrest. In addition, while the law allows police officers to take mentally disabled persons to a hospital instead of a prison upon arrest, this rarely happens. Interview with Nancy M. Anderson, Exec. Dir., Indep. Jam. Council for Human Rights, ***supra*** note 320.

323 Police shot and killed Damion Roache without cause and despite knowing that he was mentally disabled. Jamaicans for Justice, The Jamaicans for Justice Report 2009-2010, *at* 11 (2010) [hereinafter Jamaicans for Justice Report]. Additionally, in 1999, several homeless persons in Montego Bay believed to be mentally ill were tied up, pepper sprayed, and thrown into a truck in the middle of the night before being dumped

Jamaica often fails to provide an effective legal recourse against discrimination or police violence.[324] Not only are there no laws to prevent discrimination against persons on the basis of their disability or deportation status, but rampant corruption, the hiring of professional jurors, and a lack of judicial oversight prevent cases against the state from getting far.[325] Without more effective legal protection, the rights of mentally disabled deported persons to be free from state sanctioned discrimination, abuse, and violence, remains unrealized.

Assessment Recommendation[326]

Many states now recognize that the International Covenant on Civil and Political Rights (ICCPR) extends the principle of *non-refoulement* to immigrants whom, while not qualifying for status under the Refugee Convention or the Convention Against Torture (CAT), "would face a real risk of suffering serious harm" in the receiving country. The European Union, among others, offers "complementary protection" against expulsion to such immigrants. The Department of Justice (DOJ) should recognize our obligation to offer "complementary protection", and should establish procedures to prevent the return of immigrants to countries where they would face a real risk of suffering serious harm, including harm resulting from inadequate mental health care.

at the edge of an industrial drainage pond. The truck was owned by the St. James Parish Council, and the driver was a known government employee, yet no action was taken to bring the responsible actors to justice. *Id.* at 20; Interview with Nurse Joy Crooks, Adm'r, Comm. for the Upliftment of the Mentally Ill, *supra* note 26.

324 Jamaicans for Justice Report, *supra* note 323, at 20; *see also* Interview with Nancy M. Anderson, Exec. Dir., Indep. Jam. Council for Human Rights, *supra* note 320; Interview with Dr. J. Carolyn Gomes, Dir., Jamaicans for Justice, *supra* note 28.

325 Jamaicans for Justice Report, *supra* note 323, at 20.

326 *See* Assessment Recommendation, *infra* Part 5.

3. TAKING ACTION: ALTERNATIVE MODELS IN JAMAICA AND THE CARIBBEAN

When interviewers asked service providers, government officials, and deported persons for recommendations on improving U.S. policy, many drew attention to the approach of the United Kingdom. In addition, researchers learned through international organizations in Kingston that the United States has funded a number of reintegration assistance programs in the Caribbean that could serve as models for a program in Jamaica. This section describes the British program in Jamaica and U.S. programs elsewhere in the Caribbean, and the U.S.-funded repatriation program for vulnerable populations in El Salvador.

A. THE BRITISH RETURN PROGRAM

"The British government considers that we've got a responsibility to deportees. We've got to remove them to their country of origin, no question, but we've got a responsibility to integrate them. Otherwise, it will just be a revolving door. They'll just turn around and go back. If we can fund projects, there is a better chance these guys will get reintegrated here [in Jamaica] and will stay."[327]

British High Commission official

The Jamaica Reducing Re-Offending Action Plan (JRRAP) is a project of the British government that is carried out in partnership with the Jamaican Ministry of National Security.[328] JRRAP was introduced in June 2009 as a part of the 2008 Rehabilitation and Reintegration Programme (RRP), which had been established by the British and Jamaican governments.[329] The United Kingdom has established RRPs in twenty-five priority countries.[330] The JRRAP program is designed to provide (1) an emergency safety net for deported individuals who have no family support in Jamaica, and (2) services necessary to enable deported persons to reintegrate into

327 Interview with British High Comm'n officials, *supra* note 82.

328 *British Government contributing to the rehabilitation and reintegration of offenders and deported people in Jamaica,* British High Comm'n Jam. (Dec. 15, 2010), http://ukinjamaica.fco.gov.uk/en/about-us/working-with-jamaica/jrrap.

329 *Id.*

330 Interview with British High Comm'n officials, *supra* note 82 (noting that other priority countries include the United States, Afghanistan, Iraq, Pakistan, Somalia, Zimbabwe, Ghana, Turkey, and France).

Jamaican society.[331] The program is implemented on the ground by the Jamaican Ministry of National Security, local NGOs, and the British High Commission in Kingston.[332]

JRRAP assistance includes accommodation for those with no place to stay upon arrival, assistance with connecting newly arrived deported persons to local service providers, provision of temporary accommodations in homeless shelters, assistance with accessing medical care (including mental health care), and assistance with obtaining identification, skills training, and skills certification. For those with substance abuse problems, JRRAP has provided funding to the National Council on Drug Abuse and to the Salvation Army's substance abuse program to provide rehabilitation programs for deported persons.

An important result of the JRRAP has been the facilitation of information exchange between the U.K. and Jamaican governments. British officials now provide information to the Jamaican government concerning individuals to be deported *prior* to their departure, including individuals' basic details, criminal records, and if needed, information concerning the individuals' medical issues.[333] If an individual will require emergency accommodation upon arrival, British officials contact Community Group Homes, whose staff then transports and houses the deported person for their first month in Jamaica.

The British government plans to run the JRRAP program through 2014 with hopes that the Jamaican government will continue running the program themselves.[334] Comparing the British program to U.S. inaction, criminologist Dr. Bernard Headley, who has studied deportation and reintegration issues in Jamaica since 2004, believes that "Great Britain is coming through—making a good faith effort to support the reintegration of deportees, but we see nothing like this with the U.S." According to Dr. Headley, the United States should follow the United Kingdom's lead and consider providing funding for organizations on the ground.

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331 *Id.* The JRRAP program also works with local offenders incarcerated in Jamaican prisons and persons serving non-custodial sentences to provide a range of services to prevent re-offending; the program also funds infrastructure improvements in the prisons. *Id.*

332 *Id.*

333 Interview with British High Comm'n officials, ***supra*** note 82.

334 *Id.*

B. THE INTERNATIONAL ORGANIZATION FOR MIGRATION AND U.K.-FACILITATED RETURN SCHEME IN JAMAICA

In addition to the JRRAP program, the U.K. government runs the Facilitated Return Scheme (FRS), a program that provides reintegration assistance for returning prisoners.[335] The FRS has saved the government an estimated US$22.6 million a year in prison and detention center costs, as well as in casework support and legal aid costs.[336] If the criminally convicted agree to leave the United Kingdom either prior to or at the end of their sentences and give up their right to appeal their deportation order, the U.K. government provides them with a money grant up to US$2,400 (until Nov. 2010 the funding was up to US$8,000).[337] The money is not provided directly to deported persons, but is managed by the International Organization for Migration (IOM), which administers the re-integration assistance program in Jamaica. When former prisoners return to Jamaica, they must contact IOM within one month of arrival and work with IOM to decide how to most appropriately use their grant. Individuals can use the grant to pay for accommodations, health services, skills training, and/or as a small business grant.[338]

While IOM does provide valuable reintegration assistance to recently returned individuals, the organization's capacity is somewhat limited. For example, IOM does not have the staff capacity to help individuals find housing or to provide medical referrals for individuals with mental disabilities.[339] Any referrals to medical professionals are made on a personal basis on the part of IOM and not as part of the program.[340] In addition, the FRS program only offers six months' worth of assistance.[341] Given that individuals with mental disabilities often require long-term reintegration assistance, programs like FRS are often not sufficient to satisfy their needs.

An additional program that the United Kingdom offers to returning migrants[342] is the Assisted

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335 *Assisted Voluntary Return of Irregular Migrants,* UK Border Agency, http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/workingwithasylum/assistedvoluntaryreturn/avrim/ (last visited Mar. 27, 2011).

336 Frances Webber, *The Politics of Voluntary Returns,* Inst. of Race Relations (Nov. 11, 2010, 5:00 PM), http://www.irr.org.uk/2010/november/ms000026.html.

337 *Facilitated Return Scheme Core Brief*, UK Border Agency, 6 (Sept. 8, 2010), www.imb.gov.uk/docs/DC_34-10_Attachment.pdf. Even when prisoners elect to return, they technically are still deported or administratively removed from the United Kingdom. *Id.*

338 *Damian Green defends return scheme for foreign prisoners*, UK Home Office (Nov. 10, 2010), http://www.homeoffice.gov.uk/media-centre/news/return-scheme.

339 Interview with international organization official, *supra* note 120.

340 *Id.*

341 *Id.*

342 Unlike "refugee" or "asylee," the term "migrant" has not been defined under international law. *The International Organization for Migration (IOM)*, Am. Soc. of Int'l Law, (Dec. 1, 2008), http://www.asil.org/rio/iom.html. In this report, a migrant is understood as "a person who has left a State of which he or she is a citizen, national, or habitual resident." *International Migrants Bill of Rights, Draft In Progress*, 24 Geo. Immigr. L.J. 399, 400 (2010).

Voluntary Return of Irregular Migrants program (AVRIM).[343] The program, which is offered in concert with IOM, is open to persons in the United Kingdom without authorization who are not in detention or prison. After individuals agree to voluntary departure, IOM purchases their plane tickets for the return to Jamaica, helps obtain travel documents, greets each returning migrant at the airport in Jamaica, and assists them with transportation to their hometown.[344] While effective, the AVRIM program is much more limited in scope than the FRS program, as all benefits and services are terminated upon return to Jamaica.

Financial Assistance Recommendation[345]

The United States, through Congressional appropriation of funds and through U.S. Immigration and Customs Enforcement (ICE), should offer funding to social service providers, prisons, and other entities that provide medical, housing, and employment assistance to deported persons with mental disabilities. ICE should also provide financial assistance to deported persons with mental disabilities to cover basic "start up" costs related to their arrival in the country of return, including food, medicine, housing, and identification and certification documents. Funds could be disbursed and overseen via the appropriate U.S. Embassy or consulate, in collaboration with local NGOs or international organizations.

C. U.S.-FUNDED REINTEGRATION ASSISTANCE PROGRAMS IN THE CARIBBEAN[346]

While the United States does not fund IOM programs in Jamaica, it has funded IOM programs to assist returned deported persons in their return to other Caribbean countries, including Haiti and Guyana.[347] The impetus to fund reintegration programs in the Caribbean began in 2007 when Caribbean Community (CARICOM) member states requested assistance from the United

343 *Voluntary Return*, UK Border Agency, http://www.ukba.homeoffice.gov.uk/asylum/outcomes/unsuccessfulapplications/voluntaryreturn/ (last visited Mar. 27, 2011).

344 *Assisted Voluntary Return for Irregular Migrants – AVRIM,* Int'l Org. for Migration, http://www.iomlondon.org/avrim.htm (last visited Mar. 27, 2011).

345 *See* Financial Assistance Recommendation, *infra* Part 5.

346 Maureen Achieng, *Assistance to Migrants Returning from the US*, GlobalSecurity.org (Jul. 24, 2007), http://www.globalsecurity.org/security/library/congress/2007_h/070724-achieng.htm. In addition, the United States has funded IOM returnee programs in El Salvador, Guatemala, and Honduras. *Id.*

347 Press Release, Int'l Org. for Migration, IOM to Assist Returned Migrants from the United States to Guyana and the Bahamas (June 12, 2009), *available at* http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnAM/cache/offonce?entryId=25377.

States in mitigating the impact of returns by migrants convicted of crimes.[348] In response, the U.S. Department of State, Bureau of Western Hemisphere Affairs requested that IOM develop pilot reintegration programs in cooperation with Caribbean governments.[349]

The first U.S.-funded IOM program began in Haiti in April 2006 and lasted until August 2008, after which the United States anticipated that Haiti would assume control of the program.[350] USAID provided a US$1 million grant to IOM and the Haitian government to provide services to deported persons.[351] Observers believe the program was widely successful.[352] The program focused on providing entrepreneurship training, reducing the stigma of deported persons in Haitian society, and providing psychosocial support.[353] In addition, the U.S. program funded the construction of a halfway house program for newly deported immigrants and provided micro-credit loans to help deported persons start their own businesses.[354] Despite the program's success, IOM noted a number of issues that impeded efforts to assist deported persons reintegrate, including limited access to social services for deported persons who were not provided with identification prior to their arrival, a lack of temporary housing in Haiti, a lack of pre-departure support that would allow individuals to contact their families in Haiti prior to arrival, and the program's inability to refer deported persons to a range of much-needed medical services, including psychiatric care and drug rehabilitation.[355]

In August 2009, IOM began a U.S.-funded pilot reintegration project in Guyana, based on the reintegration project in Haiti.[356] The program includes assistance with obtaining national identification, substance abuse rehabilitation, psycho-social counseling, vocational training, business management training, business grants, and job placement for the newly returned.[357] In addition, funding was provided for the construction of a permanent intake center that would serve as a temporary residential facility for deported persons. Upon arrival, IOM provides immediate assis-

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348 *Id.*

349 *Id.*

350 *Id.*

351 *Id.*

352 Amy Bracken, ***For Haitians deported from the US, an unlikely welcome-home committee***, Christian Sci. Monitor, June 26, 2009, ***available at*** http://www.csmonitor.com/World/Americas/2009/0626/p06s01-woam.html. USAID sourced the grant as part of its Poverty Reduction Strategy; it was given to the UN Development Program, which then funded the IOM program. Achieng, ***supra*** note 346.

353 Achieng, ***supra*** note 346.

354 Amy Bracken, ***Influx of deportees stirs anger in Haiti***, Bos. Globe, Mar. 11, 2007, ***available at*** http://www.boston.com/news/world/latinamerica/articles/2007/03/11/influx_of_deportees_stirs_anger_in_haiti/; ***see also Haiti Regional Deportee Conference,*** HaitiXchange (Oct. 30, 2008), http://www.haitixchange.com/index.php/hx/Articles/haiti-regional-deportee-conference/.

355 Achieng, ***supra*** note 346.

356 ***Guyana signs agreement for deportees reintegration***, W. Indian News, June 4, 2009, ***available at*** http://www.thewestindiannews.com/guyana-signs-agreement-for-deportees-reintegration/.

357 Interview with international organization official, ***supra*** note 120.

tance by meeting individuals directly at the airport, providing them with a hygiene package, helping them contact relatives, and providing temporary accommodations if necessary.[358] Observers have stated that the program in Guyana has also been successful and as a result project funding has been renewed.[359] Based on the success of these pilot programs, the United States should fulfill its promise given at the 2007 U.S.-CARICOM meeting to work with Caribbean nations to expand pilot reintegration programs to other CARICOM member states.[360]

D. U.S.-FUNDED REPATRIATION PROGRAMS FOR VULNERABLE POPULATIONS

The U.S. Department of State has recently undertaken a pilot repatriation and reintegration program for unaccompanied alien children ordered removed or granted voluntary departure to El Salvador.[361] In March 2010, IOM, together with the Salvadoran Institute for the Development of Children and Adolescents, began providing transportation and financial assistance to children returning to their communities of origin. In addition, they began assisting children with family tracing and family reunification, and education and training to help children reintegrate back into their communities. The United States should consider implementing a similar reintegration program for individuals with mental disabilities, who like unaccompanied alien children, are uniquely vulnerable upon return to their countries of origin.

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358 Wendella Davidson, ***Reintegration of Deportees***, Guyana Chron. Online, June 17, 2010, ***available at*** http://www.guyanachronicleonline.com/site/index.php?option=com_content&view=article&id=14813:reintegration-of-deportees.

359 Interview with international organization official, ***supra*** note 120.

360 Press Release, Embassy of the United States, Trinidad & Tobago, ***Joint Statement: Conference on the Caribbean*** (June 20, 2007), ***available at*** http://trinidad.usembassy.gov/conference_on_the_caribbean.html.

361 U.S. Dep't of State, Report to Congress on the Provision of P.L. 110-457 Regarding Repatriation of Unaccompanied Alien Children and Government Efforts to Protect Them from Human Trafficking (2010) (on file with authors).

4. CONCLUSION

Individuals with mental disabilities who are deported from the United States will continue to face nearly insurmountable barriers to reintegration absent significant changes to U.S. deportation and reintegration policies and procedures. The United States must affirmatively act to ensure the protection and fulfillment of the human rights of all persons it deports, particularly vulnerable populations such as persons with mental disabilities.

The United States does not have a memorandum of understanding with Jamaica to advance the best practices, policies and procedures for the deportation of persons with mental disabilities. In detention, persons awaiting deportation are often unable to communicate with their families, either in the receiving country or in the United States. In addition, the United States fails to inform individuals in detention of services available in Jamaica. As a result, it is difficult for individuals to plan for their life after return; they are unable to arrange for housing, to transfer money to an account accessible in the receiving country, or to connect with service providers prior to their arrival.

Enjoyment of the right to health is hindered by the fact that deported persons rarely return with an adequate amount of medication or the medical records necessary to facilitate a safe and healthy transition. This directly affects the continuity of their mental health care, as psychiatrists in Jamaica often must spend several sessions with a patient before they are able to make a diagnosis and prescribe corresponding treatment without a prior medical history. When an individual does not arrive with an adequate amount of medication (the Performance Based National Detention Standards recommend that at least seven days' worth should be provided), they face the risk of relapse, which could have significant health effects. Furthermore, access to medication and medical treatment in Jamaica is limited.

Enjoyment of the right to adequate housing is impeded by the lack of assistance in finding temporary or long-term housing in the receiving country. For many deported persons, housing in Jamaica is unaffordable, and not all deported persons have family members in Jamaica on whom they can rely for support. As a result, many deported persons find themselves living on the street.

Enjoyment of the right to work is hampered by discrimination and the difficulty that deported persons with mental disabilities face in having their skills certified according to Jamaican standards. Many deported persons from the United States cannot afford the certification process. Furthermore, the few training programs available to deported persons are primarily available to those deported from the United Kingdom. Thus, persons deported from the United States slip through the cracks, either remaining unemployed or forced to take work for lower wages.

Many persons return without identification that is recognized in Jamaica, an issue that affects the rights to health, housing, and work, ultimately hindering the fulfillment of basic human needs. For example, identification is required to obtain a tax registration number, which allows Jamaicans to fill prescriptions for mental health medications for free or at a reduced cost. Birth certificates are also required before a person can have his skills certified to obtain work.

Enjoyment of the right to be free from state sanctioned discrimination, violence and abuse is obstructed by stigma, police brutality, and a state failure to protect individuals with mental disabilities. Further, the lack of any effective legal recourse ensures impunity for abusers. Significant stigma against both deported persons and persons with mental disabilities also affects each of the rights outlined in this report.

The United States can and should change its deportation policies and procedures in order to respect, protect, and fulfill the human rights of persons with mental disabilities to health, housing, work, and freedom from state sanctioned discrimination, violence and abuse. Implementation of the recommendations outlined below will help to ensure the full realization of the human rights of persons with mental disabilities who are deported from the United States.

5. RECOMMENDATIONS

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES AND RECEIVING COUNTRIES

Memorandum of Understanding Recommendation

The U.S. Department of Homeland Security, as represented by U.S. Immigration and Customs Enforcement (ICE) and in consultation with other appropriate government agencies, should establish a memorandum of understanding (MOU) with its corresponding branch in the receiving country's government to advance the best practices, policies and procedures for the deportation of persons with mental disabilities. The MOU on the deportation of persons with mental disabilities will provide a degree of transparency regarding the roles, responsibilities and obligations of each country to establish and maintain sound deportation and reintegration practices. In addition, the establishment of the MOU presents both countries with an ongoing opportunity to negotiate a system of deportation and reintegration that will simultaneously address national security and human rights concerns.

The MOU on the deportation of persons with mental disabilities will take into account the following:

A. U.S. practices of admitting and transferring persons into detention facilities, including the receipt of personal property and medical records, in an effort to ensure that persons ordered deported will leave with adequate medication, medical records, personal funds, and personal property;
B. provision of personal identification documents within a reasonably expedient time frame, including but not limited to the provision of the person's passport and/or birth certificate prior to release;
C. provision of medical records, medical care, and medication to persons with mental disabilities during detention, transfer to the staging center, and travel to the receiving country. Medication supplied should be sufficient to ensure continuity of care in the receiving country;
D. travel logistics of deportation, including but not limited to ensuring that flights land early enough in the day to process and release deported persons during safe traveling hours;
E. process by which any personal or pension funds in U.S. bank accounts, legal settlement awards, and/or wages arising out of work at the detention center can be secured prior to deportation, or transferred into the legal control of a U.S.-based relative with the consent of the deported person;
F. process by which persons with mental disabilities will be ensured an ethically sound opportunity to provide informed consent for the transfer of medical records to the receiving country; and
G. transfer of medical records between ICE and an elected government office, agency, or appropriate health care professional, provided that persons ordered deported gave informed consent for such a party to receive the medical records.

COMMUNICATION AND PREPARATION

Communication and Preparation Recommendation 1: U.S. Family Notification of Departure

U.S. Immigration and Customs Enforcement (ICE) should: 1) provide persons ordered deported the opportunity to notify their U.S.-based family of the impending deportation, or 2) if the person ordered deported provides informed consent for ICE to issue notification, ICE should make a good faith effort to notify his or her U.S.-based family of the impending deportation. If the date of deportation changes, ICE should provide persons ordered deported another opportunity to inform their families of the new date of departure.

Notification of family in the United States will promote the continuity of personal and legal support for the person ordered deported. Notification will enable the family to foster the deported person's reintegration into the receiving country by transferring personal finances and arranging for temporary or long-term housing.

Communication and Preparation Recommendation 2: Family/Service Provider Notification of Arrival

U.S. Immigration and Customs Enforcement (ICE) should: 1) provide persons ordered deported the opportunity to notify their receiving country-based family and/or relevant receiving country-based service providers of the impending deportation, or 2) if the person ordered deported provides informed consent for ICE to issue notification, ICE should make a good faith effort to notify his or her receiving country-based family and/or relevant receiving country-based service providers of the deported person's impending deportation.

Notification of family in the receiving country will promote the deported person's ability to successfully reintegrate into the receiving country by fostering an early connection with family, increasing the chances of family and/or a service provider receiving the deported person upon arrival, alerting the family and/or service provider of the need to procure medical services, and providing an opportunity to preemptively arrange for temporary or long-term housing. Persons ordered deported will be provided the opportunity to notify, and/or ICE will make a good faith effort to notify if informed consent is given by the person ordered deported, without causing undue delay in the deportation process. Notification will be provided to family and/or service providers no later than three weeks prior to the person's anticipated arrival.

Communication and Preparation Recommendation 3: U.S. Immigration and Customs Enforcement Reintegration Assistance Team

U.S. Immigration and Customs Enforcement (ICE) should select and task a team of ICE officers within each detention facility with the preparation of persons ordered deported for reintegration into the receiving country. Through an ICE Reintegration Assistance Team, persons ordered deported will be apprised of the appropriate steps, forms and processes to complete in order to obtain any and all personal funds in banks or owed through the government, to reclaim any and all property retained by ICE during their detention, and will be provided clear and comprehen-

sive country-specific information to facilitate their identification and navigation of reintegration-related social services provided within the receiving country.

The advising process should include, but not be limited to, provision of the following information:

A. how to access medical, housing, food, employment, and substance abuse treatment services provided by the receiving country's government and/or social service providers;
B. how to secure the identification necessary to be eligible for government and other services;
C. how to withdraw any money in U.S. bank accounts, and/or transfer bank accounts into the name of a relative;
D. how to ensure the receipt of wages arising out of work at the detention center before deportation to the receiving country;
E. how to ensure that any pension funds will be properly directed to the deported person in the receiving country;
F. how to retrieve any financial legal settlements prior to deportation to the receiving country; and
G. how prevailing social norms within the receiving country may impact reintegration, including information on prevalent social stigmas and available reintegration services.

Communication and Preparation Recommendation 4: Embassy of the United States Reintegration Assistance Team

The U.S. Department of State should establish a team or department within each of its Embassies to assist persons deported from the United States with the completion of reintegration tasks that require specialized knowledge of U.S. institutions or processes. Reintegration tasks addressed would include, but not be limited to, facilitating the following for deported persons once they arrive in the receiving country:

A. the reclamation of personal identification and/or personal property retained by ICE during detention in the United States;
B. the reclamation of any and all personal funds from U.S. financial institutions; and
C. the release of any medical records from private or government medical facilities in the United States to the deported person or to a third-party of his or her choice.

Communication and Preparation Recommendation 5: Identification

U.S. Immigration and Customs Enforcement (ICE) should return the passport, birth certificate, and/or personal identification of persons ordered deported immediately following the issuance of a removal order, or as soon as is practicable thereafter. At no time should ICE retain the personal identification documents of a person being deported.

Where ICE has satisfied a good faith effort to acquire available identification for the person ordered deported, but is not successful, it should:

A. consult the person ordered deported and request informed consent to notify the government, the U.S. Embassy Reintegration Assistance Team, a family member, or an appro-

priate service provider in the receiving country that he or she will be returning without personal identification; and

B. if informed consent is given, ICE will request that the party selected for notification assist the deported person in obtaining the identification necessary to apply for benefit and skills programs and/or enter the labor market in an effort to successfully reintegrate into society.

MEDICAL RECORDS

Medical Records Recommendation 1: Medical Records, Generally

Upon receiving the deported person's informed consent, all of his medical records should be made available for review and analysis by medical professionals in the receiving country. If consent is provided, potential options include:

A. providing the medical records directly to the person awaiting deportation;
B. providing the medical records to the deported person's guardian/chaperone;
C. sending the medical records to a family member or healthcare provider in the receiving country prior to deportation; or
D. establishing an information-sharing system similar to the manner in which medical records are transferred from physician to physician in the United States (see Medical Records Recommendation 2).

The transfer option chosen should be made on a case-by-case basis in consideration of the deported person's preference as well as a determination made by U.S. Immigration and Customs Enforcement regarding which option would most likely ensure the safe transfer of the medical records to the receiving country.

Medical Records Recommendation 2: Consent

U.S. Immigration and Customs Enforcement (ICE), should establish a process for obtaining the informed consent of persons ordered deported to release their medical records to a specified party in the receiving country, where the person ordered deported has expressed an interest in the transfer of medical records to a third party.

ICE should inform persons awaiting deportation that medical records may be released to a specialized office or agent within the receiving country's government, their family, or an appropriate service provider if desired. In the event that the person awaiting deportation does not consent to the transfer of medical records to a third party, ICE should facilitate the release of medical records directly to the person ordered deported.

Medical Records Recommendation 3: Receipt of Medical Records in Receiving Country

Where the person awaiting deportation has given informed consent to a medical record transfer, U.S. Immigration and Customs Enforcement (ICE) should coordinate the receipt of a deported person's medical records by a government office, agent, guardian, chaperone, family member, or appropriate medical professional within the receiving country.

In the event that the receiving country's government has not established an office or agent with the professional capacity to receive medical records, ICE and the Department of State should promote and assist in the establishment of such an office or agent. Where necessary, ICE should assist the person awaiting deportation in locating an appropriate public health care professional within the receiving country to receive the medical records. Medical records transferred to a government office or agent, or to a health care professional, will only be forwarded upon the receiving party's acknowledgment that the records are confidential and to be utilized for the explicit and limited purpose of addressing the deported person's medical health care needs upon return.

MEDICATION

Medication Recommendation 1: Provision of Medication Upon Deportation

U.S. Immigration and Customs Enforcement (ICE) Health Service Corps should provide persons awaiting deportation with at least seven days of medication in appropriate dosages, pursuant to ICE/Enforcement and Removal Operations Medical Standards. Before administering the medication, the Health Service Corps should determine the period of time it takes to access a doctor and/or medication in the receiving country and location where the person will likely reside. If the period is longer than seven days, the Health Service Corps has a responsibility to provide medication for the duration of the known or approximate period, thereby ensuring continuity of care.

The Health Service Corps should consider several factors when evaluating a mentally disabled person's likely access to medication in the receiving country, including:

A. the physical and mental risks posed by a potential relapse if medication is not available;
B. barriers to accessing mental health care in the receiving country;
C. the quality of mental health care in the receiving country; and
D. the severity of mental disability and the necessity of medication to treat it.

Medication Recommendation 2: Oversight Over Continuity of Care

Enforcement and Removal Operations (formerly known as the Office of Detention and Removal Operations (DRO)) should institute procedures to monitor the compliance of the U.S. Immigration and Customs Enforcement (ICE) Health Service Corps with the ICE/DRO Detention Standards on Medical Care, Section S: Continuity of Care, which states:

> The facility administrative health authority must ensure that a plan is developed that provides for continuity of medical care in the event of a change in detention placement or status.

The detainee's medical needs shall be taken into account prior to any transfer of the detainee to another facility and alternatives to transfer shall be considered, taking into account the disruption that a transfer will cause to a detainee receiving medical care (see ICE/DRO National Detention Standard on **Transfer of Detainees**, Section II-A). Upon transfer to another facility or release, the medical provider shall ensure that all relevant medical records and at least 7 days' (or, in the case of TB medications, 15 days') supply of medication shall accompany the detainee.

Medication Recommendation 3: Funding for Medication

Congress should appropriate funding for social service providers in the receiving country as well as prisons housing deported persons with mental disabilities to ensure that medication is consistently available to deported persons for a limited period of time immediately upon arrival. This would assist in preventing deported persons from possibly experiencing harmful relapses as a result of not having access to necessary medicine. Without such funding, the United States would be directly responsible for placing individuals in an environment that does not have adequate access to medication.

HOUSING

Housing Recommendation 1: Securing Housing

U.S. Immigration and Customs Enforcement (ICE) should work to identify and assist with securing appropriate housing for mentally disabled persons awaiting deportation before they arrive in the receiving country. ICE should work with service providers and organizations that provide housing so as to ensure that any housing is adequately responsive to the needs of individuals with mental disabilities.

Before an individual is deported, ICE should confirm that both short- and long-term housing for mentally disabled deported persons exists, is functional, and is properly funded.

A. Short-Term Housing: Given that many of the shelters that initially house deported persons can only provide temporary services, the United States should assist governments struggling to provide adequate housing financially so that deported persons have someplace to stay in the short-term after departing these temporary shelters, thus preventing any lapses in housing and the real likelihood of homelessness. Such assistance would encourage successful reintegration and address the right to housing. In addition, short-term housing provides continued stability and serves as a stepping-stone toward independent living within the community.
B. Long-Term/Independent Housing: The United States should further assist deported persons who are prepared to transition from shelters, hostels, or group homes to more permanent housing by funding long-term, independent living options in countries that do not have the financial capability to do so.

Housing Recommendation 2: Funding for Independent Housing

Congress should appropriate funding for the purpose of promoting reintegration by providing limited financial assistance to deported persons seeking permanent housing. Such funds would be used to cover basic expenses, such as food, pay any initial rent/utilities/other housing-related costs, as well as cover the cost of medication and obtaining identification documents.

EMPLOYMENT

Employment Recommendation 1: Formal Recognition of Training and Education

The U.S. government, through U.S. Immigration and Customs Enforcement (ICE), should facilitate recognition by the receiving country of vocational, educational, or professional training or certification acquired in the United States to enable the deported person to become "certified" in that work area upon arrival in the receiving country. This should be accomplished through bilateral negotiations and by informing persons in immigration or other detention about the requirements for certification in the country to which they will be returned.

In the case of training acquired in detention, ICE should ensure that records of such training are transferred to the individual prior to deportation. This will require communication and cooperation between ICE and federal or state prison authorities.

When certification requires the payment of fees in the country of return, ICE should allow detained persons to access their personal funds in order to prepare for this process. If the detained person does not have sufficient personal funds, ICE should provide basic financial assistance to cover the costs of the certification process. Toward the goal of ensuring that deported persons do not face financial barriers to certification, the United States, through the U.S. Agency for International Development, could additionally or alternatively fund local NGOs that assist deported persons, especially those with mental disabilities, in obtaining skills certification.

Employment Recommendation 2: Vocational and Technical Training

The United States, through the U.S. Agency for International Development and diplomatic missions, should assist deported persons with mental disabilities in obtaining local vocational and technical training if they do not yet have training for which they could obtain employment. Congress should appropriate funds to establish a program that trains and certifies deported persons to perform particular skills in the local workforce. This program could be run by a local NGO with oversight and funding from the appropriate U.S. Embassy or consulate.

Any U.S.-funded training and certification should take into account the range of needs of persons with mental disabilities, i.e. by ensuring that persons in need of remedial or special education classes have access to such programs. Additionally, consideration should be given to the location of any training facilities, such as whether they are accessible to persons with limited means of transportation.

Employment Recommendation 3: Obtaining Employment

The United States, through the U.S. Agency for International Development (USAID) and diplomatic missions, should assist deported persons with mental disabilities in finding employment in the country to which they are returned. This could be accomplished by U.S. government representatives, building strong ties with local businesses, and by providing funding or other resource support, such as training, for employment agencies or NGOs that can connect deported persons with potential employers.

U.S. diplomatic missions and USAID should support local agencies or NGOs that make use of career development officers to help deported persons determine whether an individual is eligible for certification, and whether additional training or remedial programs will be necessary in order to obtain certification. Such career development officers should also be employed to assist deported persons build a résumé, obtain references, and adapt to what may be an unfamiliar cultural landscape.

TRAINING AND PROGRAMMATIC SUPPORT

Training and Programmatic Support Recommendation

Congress should appropriate funds for the purpose of contracting local NGOs in receiving countries to conduct human rights-based training and educational programs for foreign government actors, such as immigration officers, police officers, and judges, who interact with mentally disabled deported persons. Training should also be provided for local businesses and other actors who may offer assistance to, or interact with, mentally disabled individuals. Such training and educational programs could be implemented through currently existing USAID programs. Programs should be run by local NGOs in receiving countries with expertise in human rights, and should include:

A. training on recognizing mental disability, with the goal of ensuring that deported persons are referred to the most suitable service provider for their specific needs; and
B. workshops on the rights of persons with mental disabilities, including the right to be free from discrimination and the right to be free from arbitrary detention, with grounding in domestic and international human rights law.

FINANCIAL ASSISTANCE

Financial Assistance Recommendation

The United States, through Congressional appropriation of funds and through Immigration and Customs Enforcement (ICE), should provide financial assistance:

A. to social service providers, prisons, and other entities that provide medical assistance to deported persons with mental disabilities, to ensure that quality medication will be available to the deported person immediately upon arrival in the country of return;

B. to social service providers that offer housing and employment assistance to deported persons with mental disabilities, to reduce the incidence of homelessness and poverty among this population; and/or
C. to deported persons with mental disabilities to cover basic "start up" costs, including food, rent and utilities, medicine, identification documents, and certifications for employment.

To fund this assistance, ICE should draw upon the Department of Homeland Security's breached bond detention account. As of the end of February 2011, the account had collected US$22.990 million for fiscal year 2011. Funds could be disbursed and overseen via the appropriate U.S. Embassy or consulate, in collaboration with local NGOs or international organizations. Alternatively, the U.S. Agency for International Development or the State Department could provide a grant and request the International Organization for Migration or another experienced and effective international or local organization to disperse the grant funds and oversee the grant recipients.

To ensure the proper use of funds, the U.S. State Department, via the appropriate diplomatic mission, could impose reporting requirements on local NGOs or international organizations and conduct periodic auditing. Deported persons who are the beneficiaries of such funds could be required to meet with a counselor or other official to demonstrate that the funds were used for the intended purpose.

JUDICIAL DISCRETION

Assessment Recommendation: The Department of Justice Should Promulgate a Policy Memo and/or Regulations to Assess Serious Harm

It is widely held that The International Covenant on Civil and Political Rights (ICCPR)—a human rights convention ratified by the United States in 1992—requires an assessment of whether an immigrant faces "a real risk of serious harm" in the receiving country. Although not formally defined, serious harm includes serious human rights violations that directly or indirectly place a person in danger, including violations of the right to adequate mental health care.

If serious harm is identified, immigrants otherwise eligible for deportation should not be returned to the receiving country, and must be permitted to remain until circumstances no longer constitute a real risk of serious harm. Globally, this is often referred to as "complementary protection," and it is recognized in at least twenty-eight countries, including European Union member states and Canada.

The Department of Justice should bring the United States into compliance with this obligation under the ICCPR, and should draft policy and/or regulations establishing that, prior to issuing an order of removal, the Executive Office of Immigration Review must consider whether complementary protection is warranted pursuant to an individualized assessment of serious harm. Serious harm shall include serious human rights violations, including violations of the right to adequate mental health care.

APPENDICES

APPENDIX A: METHODOLOGY

Students from Georgetown Human Rights Action proposed and, in conjunction with the Georgetown Law Human Rights Institute, developed this fact-finding mission. A team of nine Georgetown Law students and two faculty members conducted fact-finding and developed this report through months of research. The project sought to identify the major obstacles to reintegration for deported persons with mental disabilities in Jamaica, including possible human rights violations, and encourage the United States to take responsibility for and affirmatively address our role in the marginalization of this vulnerable population.

The Georgetown Law Human Rights Institute Fact-Finding Mission team enrolled in a year-long seminar developed by the Georgetown Law Human Rights Institute and Georgetown Human Rights Action. The team spent the fall of 2010 studying U.S. immigration law and policy, U.S. policies regarding deportation, human rights law, and relevant information about Jamaica. The research team also consulted civil society members and academics in the United States concerning the development and substance of this report.

The fact-finding for this report occurred primarily during January 10-14, 2011, in Kingston and Montego Bay, Jamaica. While there, the research team conducted interviews with Jamaicans deported from the United States and other countries, their family members, mental health professionals, social service providers, academics, Jamaican and British government officials, representatives of international organizations, and human rights advocates.

In total, the team interviewed fifty-six people. Of these, nineteen were individuals with mental disabilities who had been deported from the United States;[362] the team also spoke with two family members of deported individuals with mental disabilities. The team spoke with seven persons who had been deported from the United States and did not have mental disabilities, one person who had been deported from Canada, and one person who had been deported from the United Kingdom. The team also spoke with five officials of the Jamaican government, two officials of the government of the United Kingdom, one employee of an international organization, and five academics residing in Jamaica. In addition, the team spoke with eighteen directors or employees of eleven different Jamaican non-governmental organizations. Interviews were generally held in the office of the interviewee, at the hotel of the research team, or at the site of the non-governmental organization.

Upon returning to Washington, D.C., the team consolidated its findings and recommendations into this report.

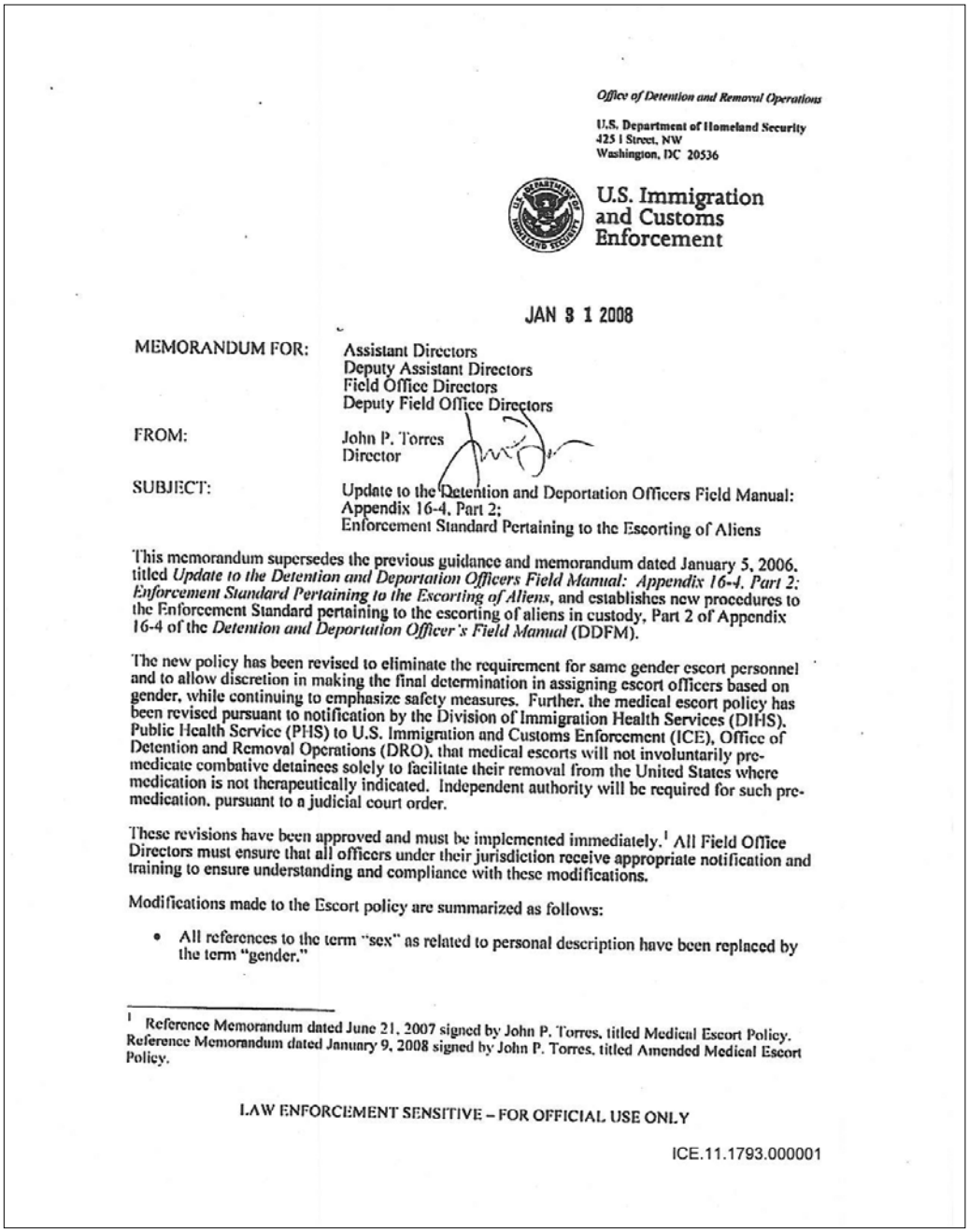
362 The research team spoke with five individuals who are directors or employees of civil society organizations in Jamaica, and had also been deported from the United States in the past. These individuals have been counted only in their professional capacities.

APPENDIX B: JRRAP SERVICE PROVIDERS

The following chart lists organizations currently promoted and supported by the Jamaica Reducing Re-Offending Action Plan (JRRAP). The capacity of these programs is not sufficient to meet the demand of deported persons. In addition, JRRAP funding is scheduled to end within the next three years, which will widen the gap between services available and the needs of deported persons

Organization	Services Provided	Description
2nd Chance Services	Emergency Accommodation and Supplies; Health and Counseling	Provides displaced persons with counseling, welfare assistance, overseas telephone calls, internet access, and job searches.
Community Group Homes Ltd.	Community Clinics and Services; Emergency Accommodation and Supplies	Provides emergency accommodation for men who have been deported but have nowhere to stay upon arrival in Jamaica. Deported persons can stay for 30 days, with the possibility of an extension.
Family Unification and Resettlement Initiative (FURI)	Emergency Accommodation and Supplies	Aids in the reintegration of deported persons through referrals, counseling, reconnection with family, and help in obtaining identification documents.
Female Prisoners' Welfare Project – Hibiscus Jamaica Ltd.	Education and Skills Training; Health and Counseling	Delivers reintegration, rehabilitation and resettlement services to deported women and their dependents, including counseling, referrals, and accommodations.
HEART Trust/NTA	Education and Skills Training	Certifies qualifications in skills or trades obtained by deported persons in the United Kingdom. Also provides retraining.
National Council on Drug Abuse	Health and Counseling	Administers drug prevention and treatment programs.
National Organisation for Deported Migrants	Advocacy	A social entrepreneurial organization founded, staffed, and run by deported persons in the social, economic, legal and political interests of all Jamaicans involuntarily returned to their homeland.
Open Arms Drop-in Centre	Emergency Accommodation and Supplies	Operates a day center for homeless adults (male and female) and a night shelter for men.
Richmond Fellowship Jamaica – Residential Drug Rehabilitation Programme (Patricia House)	Health and Counseling; Emergency Accommodation and Supplies	Provides drug and alcohol rehabilitation programs.
The Salvation Army	Health and Counseling	Provides food, rehabilitation, and access to hostel accommodations. Offers a 26-week program for males with counseling and training services.

APPENDIX C: ICE ENFORCEMENT STANDARD PERTAINING TO THE ESCORTING OF ALIENS



Office of Detention and Removal Operations

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

JAN 3 1 2008

MEMORANDUM FOR: Assistant Directors
Deputy Assistant Directors
Field Office Directors
Deputy Field Office Directors

FROM: John P. Torres
Director

SUBJECT: Update to the Detention and Deportation Officers Field Manual: Appendix 16-4, Part 2: Enforcement Standard Pertaining to the Escorting of Aliens

This memorandum supersedes the previous guidance and memorandum dated January 5, 2006, titled *Update to the Detention and Deportation Officers Field Manual: Appendix 16-4, Part 2: Enforcement Standard Pertaining to the Escorting of Aliens*, and establishes new procedures to the Enforcement Standard pertaining to the escorting of aliens in custody, Part 2 of Appendix 16-4 of the *Detention and Deportation Officer's Field Manual* (DDFM).

The new policy has been revised to eliminate the requirement for same gender escort personnel and to allow discretion in making the final determination in assigning escort officers based on gender, while continuing to emphasize safety measures. Further, the medical escort policy has been revised pursuant to notification by the Division of Immigration Health Services (DIHS), Public Health Service (PHS) to U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO), that medical escorts will not involuntarily pre-medicate combative detainees solely to facilitate their removal from the United States where medication is not therapeutically indicated. Independent authority will be required for such pre-medication, pursuant to a judicial court order.

These revisions have been approved and must be implemented immediately.[1] All Field Office Directors must ensure that all officers under their jurisdiction receive appropriate notification and training to ensure understanding and compliance with these modifications.

Modifications made to the Escort policy are summarized as follows:

- All references to the term "sex" as related to personal description have been replaced by the term "gender."

[1] Reference Memorandum dated June 21, 2007 signed by John P. Torres, titled Medical Escort Policy. Reference Memorandum dated January 9, 2008 signed by John P. Torres, titled Amended Medical Escort Policy.

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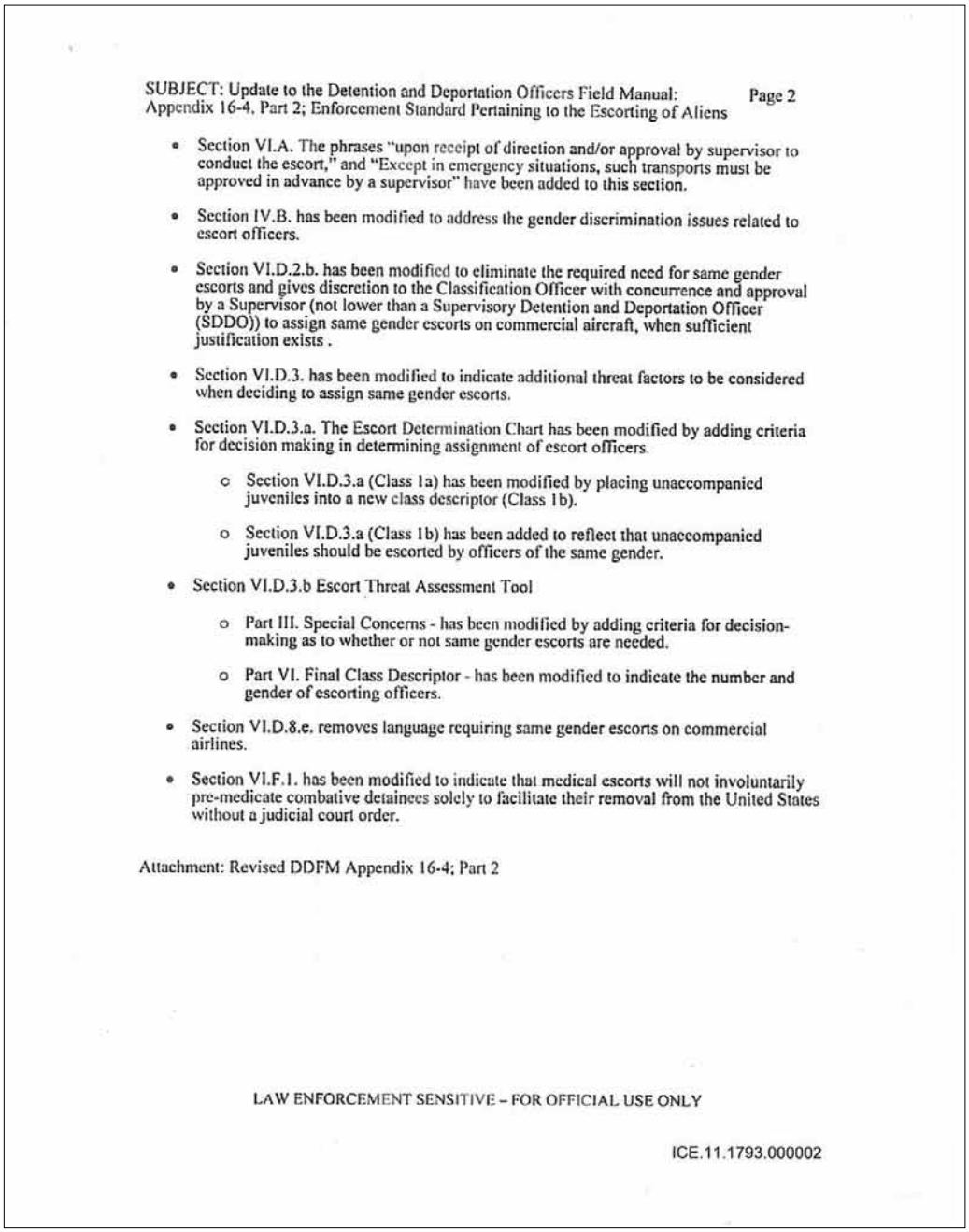
APPENDIX C: ICE ENFORCEMENT STANDARD PERTAINING TO THE ESCORTING OF ALIENS



SUBJECT: Update to the Detention and Deportation Officers Field Manual: Appendix 16-4, Part 2; Enforcement Standard Pertaining to the Escorting of Aliens Page 2

- Section VI.A. The phrases "upon receipt of direction and/or approval by supervisor to conduct the escort," and "Except in emergency situations, such transports must be approved in advance by a supervisor" have been added to this section.
- Section IV.B. has been modified to address the gender discrimination issues related to escort officers.
- Section VI.D.2.b. has been modified to eliminate the required need for same gender escorts and gives discretion to the Classification Officer with concurrence and approval by a Supervisor (not lower than a Supervisory Detention and Deportation Officer (SDDO)) to assign same gender escorts on commercial aircraft, when sufficient justification exists .
- Section VI.D.3. has been modified to indicate additional threat factors to be considered when deciding to assign same gender escorts.
- Section VI.D.3.a. The Escort Determination Chart has been modified by adding criteria for decision making in determining assignment of escort officers.
    - Section VI.D.3.a (Class 1a) has been modified by placing unaccompanied juveniles into a new class descriptor (Class 1b).
    - Section VI.D.3.a (Class 1b) has been added to reflect that unaccompanied juveniles should be escorted by officers of the same gender.
- Section VI.D.3.b Escort Threat Assessment Tool
    - Part III. Special Concerns - has been modified by adding criteria for decision-making as to whether or not same gender escorts are needed.
    - Part VI. Final Class Descriptor - has been modified to indicate the number and gender of escorting officers.
- Section VI.D.8.e. removes language requiring same gender escorts on commercial airlines.
- Section VI.F.1. has been modified to indicate that medical escorts will not involuntarily pre-medicate combative detainees solely to facilitate their removal from the United States without a judicial court order.

Attachment: Revised DDFM Appendix 16-4; Part 2

LAW ENFORCEMENT SENSITIVE – FOR OFFICIAL USE ONLY

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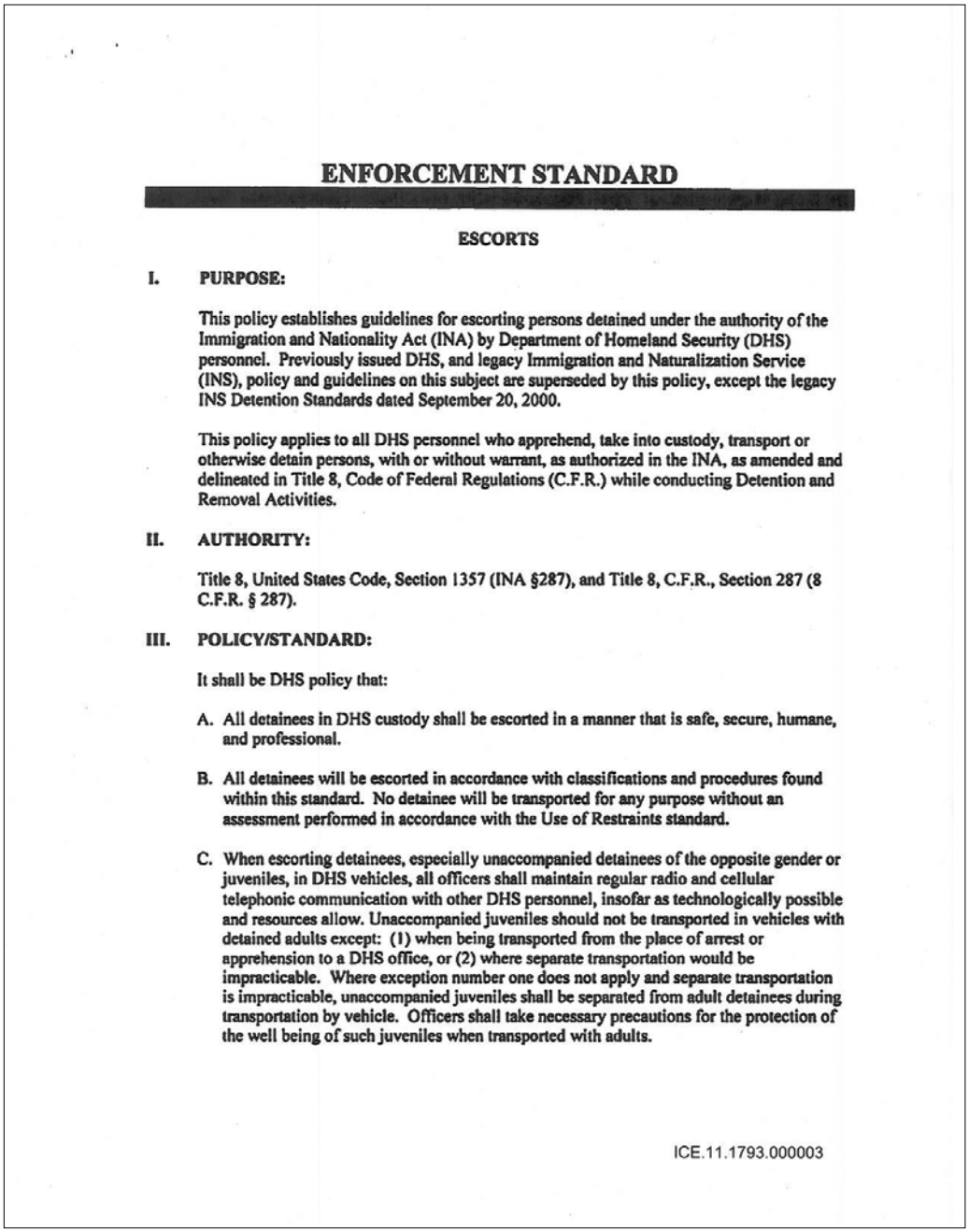

ENFORCEMENT STANDARD

ESCORTS

I. PURPOSE:

This policy establishes guidelines for escorting persons detained under the authority of the Immigration and Nationality Act (INA) by Department of Homeland Security (DHS) personnel. Previously issued DHS, and legacy Immigration and Naturalization Service (INS), policy and guidelines on this subject are superseded by this policy, except the legacy INS Detention Standards dated September 20, 2000.

This policy applies to all DHS personnel who apprehend, take into custody, transport or otherwise detain persons, with or without warrant, as authorized in the INA, as amended and delineated in Title 8, Code of Federal Regulations (C.F.R.) while conducting Detention and Removal Activities.

II. AUTHORITY:

Title 8, United States Code, Section 1357 (INA §287), and Title 8, C.F.R., Section 287 (8 C.F.R. § 287).

III. POLICY/STANDARD:

It shall be DHS policy that:

A. All detainees in DHS custody shall be escorted in a manner that is safe, secure, humane, and professional.

B. All detainees will be escorted in accordance with classifications and procedures found within this standard. No detainee will be transported for any purpose without an assessment performed in accordance with the Use of Restraints standard.

C. When escorting detainees, especially unaccompanied detainees of the opposite gender or juveniles, in DHS vehicles, all officers shall maintain regular radio and cellular telephonic communication with other DHS personnel, insofar as technologically possible and resources allow. Unaccompanied juveniles should not be transported in vehicles with detained adults except: (1) when being transported from the place of arrest or apprehension to a DHS office, or (2) where separate transportation would be impracticable. Where exception number one does not apply and separate transportation is impracticable, unaccompanied juveniles shall be separated from adult detainees during transportation by vehicle. Officers shall take necessary precautions for the protection of the well being of such juveniles when transported with adults.

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APPENDIX C: ICE ENFORCEMENT STANDARD PERTAINING TO THE ESCORTING OF ALIENS

D. No detainee shall be transported without the assigned officer conducting his/her own search of the detainee's person, except when exigent circumstances pose a safety hazard or danger to the officer, detainee or public. In the latter case, a search shall be conducted as soon as practicable. A pat down search shall be the minimum search conducted. This includes officer-to-officer transfers, as well as transfers from an institution.

E. Regardless of the means of transportation, no baggage, luggage or parcel shall be transported in a manner making it accessible by any detainee unless the item has been thoroughly searched by the officer transporting the detainee, except when exigent circumstances pose a safety hazard or danger to the officer, detainee or public. In the latter case, a search shall be conducted as soon as practicable.

F. The passenger section of all empty DHS vehicles and immediate confinement areas shall be searched prior to, as well as following, each escort to ensure that no weapons or contraband have been hidden or left behind.

IV. RESPONSIBILITIES:

A. DHS shall be responsible for identifying and providing approved restraints for use by all officers escorting detainees (Refer to the ICE DRO Use of Restraints Enforcement Standard).

B. Managers and supervisors are responsible for determining the need for, number, and gender, of escorts required for any detainee based on the classification officer's recommendation in accordance with this standard and its classification system.

C. It is the responsibility of supervisors and officers to convey all known information of escape risks, criminal background or involvement, potential threat to national security, violence, victim of sex crimes, or medical indications to escorting officers.

D. Escorting officers have the responsibility to determine the need and level of restraints used at any time while escorting a detainee. Such determination shall be based on an articulated reason(s).

V. DEFINITIONS:

- Adult – A male or female person believed to be 18 years of age or older.
- Classification Officer – A DHS officer designated by a supervisor to determine the escort classification of a detainee while performing Detention and Removal activities.
- Contraband – Any item possessed by a detainee that is prohibited by the DHS or by law.
- Detainee – Any person, regardless of citizenship or nationality, under arrest, detained, restrained, escorted, or confined by DHS or any other law enforcement agency.

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- **Escape Risk – Any detainee who, in the belief of a DHS officer, may attempt escape from DHS custody if not otherwise prevented. An individual who will actively seek opportunities to escape from DHS custody.**
- **Escort – To transport or otherwise move any person detained under the immigration laws of the United States (8 U.S.C. § 1101 et.seq.).**
- **Immediate Relative – A person being one of the following to a detainee: spouse, parent, grandparent, child, sibling, aunt, uncle, or legal guardian. When applied to a juvenile, the immediate relative must be an adult.**
- **Juvenile – A person known or reasonably believed not to have reached his/her 18th birthday.**
- **Medical Professional – A licensed doctor, nurse practitioner, technician, or aide trained to treat, provide care, administer medication, or perform services specific to the medical needs of the person being escorted.**
- **Officer – Any officer or agent employed by DHS**
- **Pat-down Search – An examination in which an officer's hands briefly make contact with a detainee's body and clothing in order to detect and remove contraband and/or weapons.**
- **Unaccompanied Female – A female not in the company of an immediate relative.**
- **Unaccompanied Juvenile – A juvenile not in the company of an adult immediate relative.**
- **Weapon – Any object, item, or device that may be used to cause physical injury, incapacitate, or diminish capability, temporarily or permanently.**

Note: these definitions are only for purposes of this Enforcement Standard.

VI. PROCEDURES:

When transported, detainees shall be restrained in accordance with the Enforcement Standard on the Use of Restraints and when restrained, placed in seatbelts (when practicable). Depending upon the risk classification of the detainees, duration of travel, and destination, consideration may be given to the use of additional ICE approved restraints.

It is recognized that there may be unforeseen, unusual situations or emergencies where an insufficient number of officers are available to meet the staffing guidelines provided below. Where circumstances indicate a greater safety or escape risk, the supervisor will always exercise discretion in favor of more caution and greater supervision of escorted aliens. In no case should a supervisor subject an officer or the public to undue risk. The supervisor may seek to postpone a particular escort duty in order to permit an appropriate number of officers to be available for an assignment. However, the final determination in these circumstances will not be made lower than the level of an Assistant Field Office Director. Under normal circumstances, apply the procedures below:

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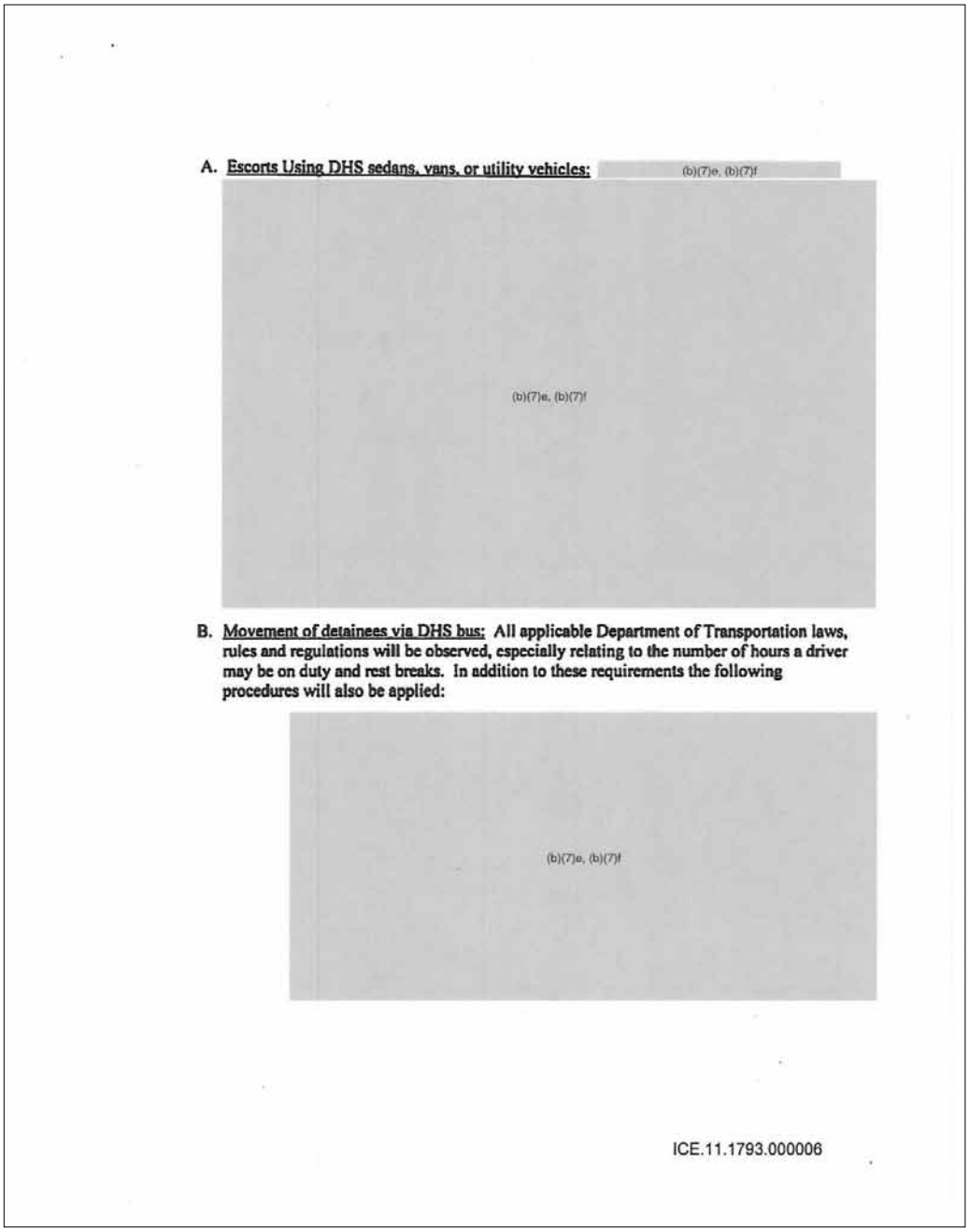
APPENDIX C: ICE ENFORCEMENT STANDARD PERTAINING TO THE ESCORTING OF ALIENS



A. **Escorts Using DHS sedans, vans, or utility vehicles:** (b)(7)e, (b)(7)f

(b)(7)e, (b)(7)f

B. **Movement of detainees via DHS bus: All applicable Department of Transportation laws, rules and regulations will be observed, especially relating to the number of hours a driver may be on duty and rest breaks. In addition to these requirements the following procedures will also be applied:**

(b)(7)e, (b)(7)f

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C. Escorting detainees on Justice Prisoner and Alien Transportation System (JPATS) Aircraft: Detainees transported on JPATS aircraft (and vehicles) are subject to the policies and stipulations found in the JPATS Prisoner Transportation Manual. Officers should consult that reference for instructions regarding the use of restraints and escorts on JPATS aircraft.

D. Escorting detainees on commercial aircraft:

1. Regulations: Personnel assigned to escort detainees shall be familiar with, and strictly observe, the Transportation Security Administration (TSA) regulations regarding carrying weapons and transporting prisoners on commercial flights. See 49 C.F.R. §1544.219 and 1544.221. Note that the TSA regulation on transporting prisoners does not apply to the escort of non-violent DHS detainees. See 14 C.F.R. §1544.221(a)(3).

2. Reservations: Personnel assigned to making reservations to transport detainees on scheduled commercial aircraft will normally advise the airlines(s) one day before the anticipated flight of the intention to transport a detainee under the control of a law enforcement officer. Persons making reservations shall notify the carrier or agent accepting the reservation of each traveler's escort classification. In accordance with TSA regulations (49 C.F.R. §1544), under no circumstances, exigent or otherwise, will this notification take place less than one (1) hour prior to the flight. Airlines are under no obligation to transport an officer and/or his/her detainee. Corporate airline policy on the types and use of restraints varies between airlines and airports. The aircraft's captain has the ultimate authority as to who may travel on his/her aircraft and to determine the use of restraining devices on any flight. If the captain's decision is unacceptable, the officer and detainee shall deplane and make other arrangements.

   a. Current restrictions exist, due to requirements of airlines, foreign governments, and other external entities. A list of these restrictions is maintained by ICE DRO's Centralized Ticketing Unit (CTU). The CTU should be consulted prior to making any foreign travel arrangements.

   b. Same gender escorts are not required, unless it is determined by the Classification Officer and substantiated and approved by a supervisor (not lower than a Supervisory Detention and Deportation Officer (SDDO), that the privacy interests of the detainee will likely be compromised because there is no reasonable alternative to protect the detainee's privacy interest, requiring one escorting officer to be of the same gender as the detainee when utilizing commercial airline travel. This determination must be documented on the "Escort Threat Assessment" form.

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APPENDIX C: ICE ENFORCEMENT STANDARD PERTAINING TO THE ESCORTING OF ALIENS

3. Classification: The classification officer will use the Escort Determination Chart (see 3a, below), in conjunction with the Escort Threat Assessment (see 3b, below) to classify all detainees being transported on commercial carriers prior to the detainee being escorted. The classification officer will make a threat assessment of each detainee, or group of detainees, using the Escort Threat Assessment, and then recommend a Class Descriptor. Threat factors to be considered include criminal background, propensity for violence or disruptive behavior, potential threat to national security, potential risk to the public, length of flight, layover durations, temporary detention facilities at transit locations, whether alien has been a victim of a gender crime by a member of the opposite gender, medical condition(s), age and ability to resist an officer's control. The classification officer will note the Final Class Descriptor on the Record of Persons and Property Transferred, Form I-216, in the margin immediately to the left of each person's name and "A" file number. Absent Form I-216, written record should be made on any local flight arrangements sheet to be permanently retained in the aliens' file.

a. **ESCORT DETERMINATION CHART**

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(b)(7)f, (b)(7)e
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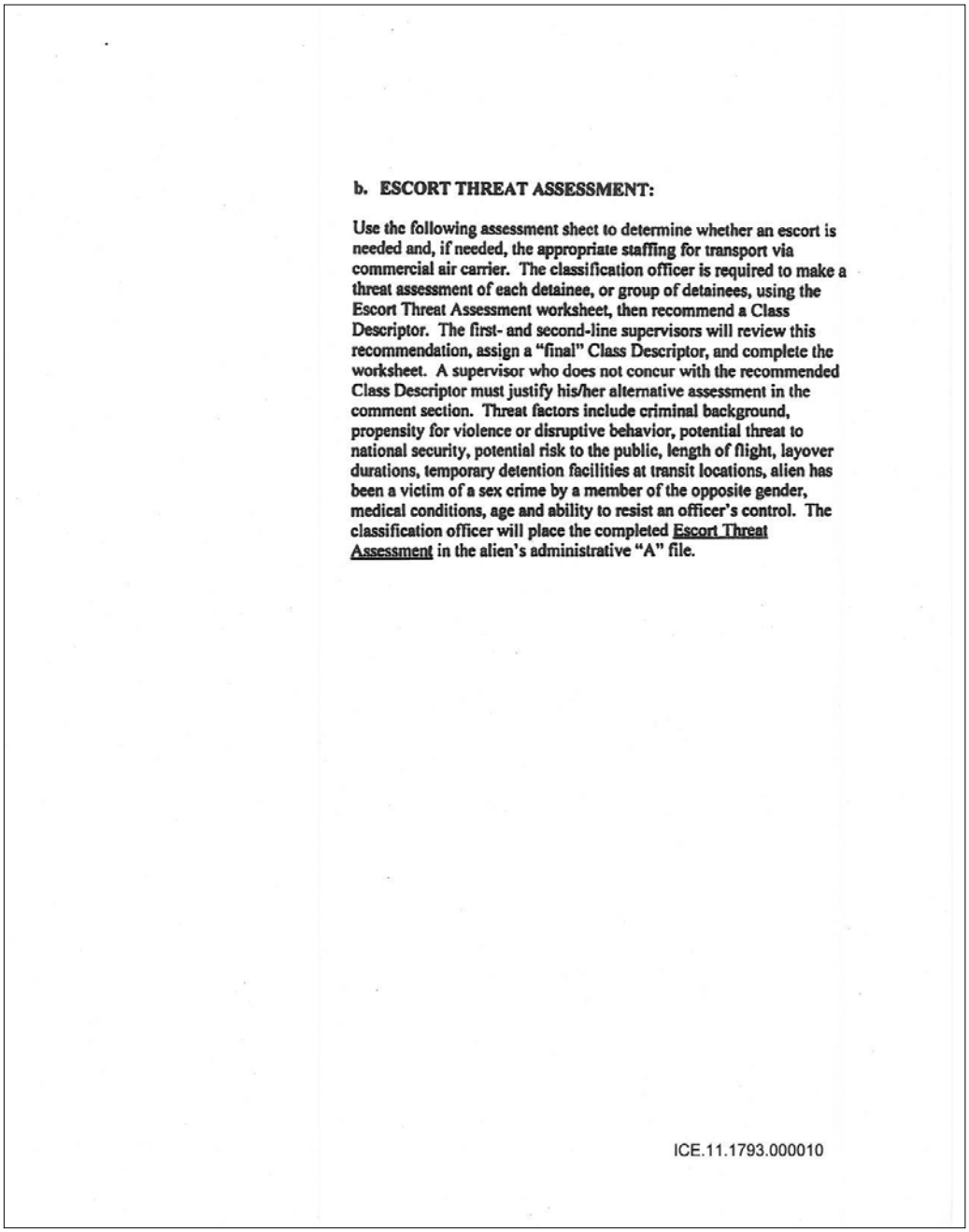
APPENDIX C: ICE ENFORCEMENT STANDARD PERTAINING TO THE ESCORTING OF ALIENS



b. ESCORT THREAT ASSESSMENT:

Use the following assessment sheet to determine whether an escort is needed and, if needed, the appropriate staffing for transport via commercial air carrier. The classification officer is required to make a threat assessment of each detainee, or group of detainees, using the Escort Threat Assessment worksheet, then recommend a Class Descriptor. The first- and second-line supervisors will review this recommendation, assign a "final" Class Descriptor, and complete the worksheet. A supervisor who does not concur with the recommended Class Descriptor must justify his/her alternative assessment in the comment section. Threat factors include criminal background, propensity for violence or disruptive behavior, potential threat to national security, potential risk to the public, length of flight, layover durations, temporary detention facilities at transit locations, alien has been a victim of a sex crime by a member of the opposite gender, medical conditions, age and ability to resist an officer's control. The classification officer will place the completed Escort Threat Assessment in the alien's administrative "A" file.

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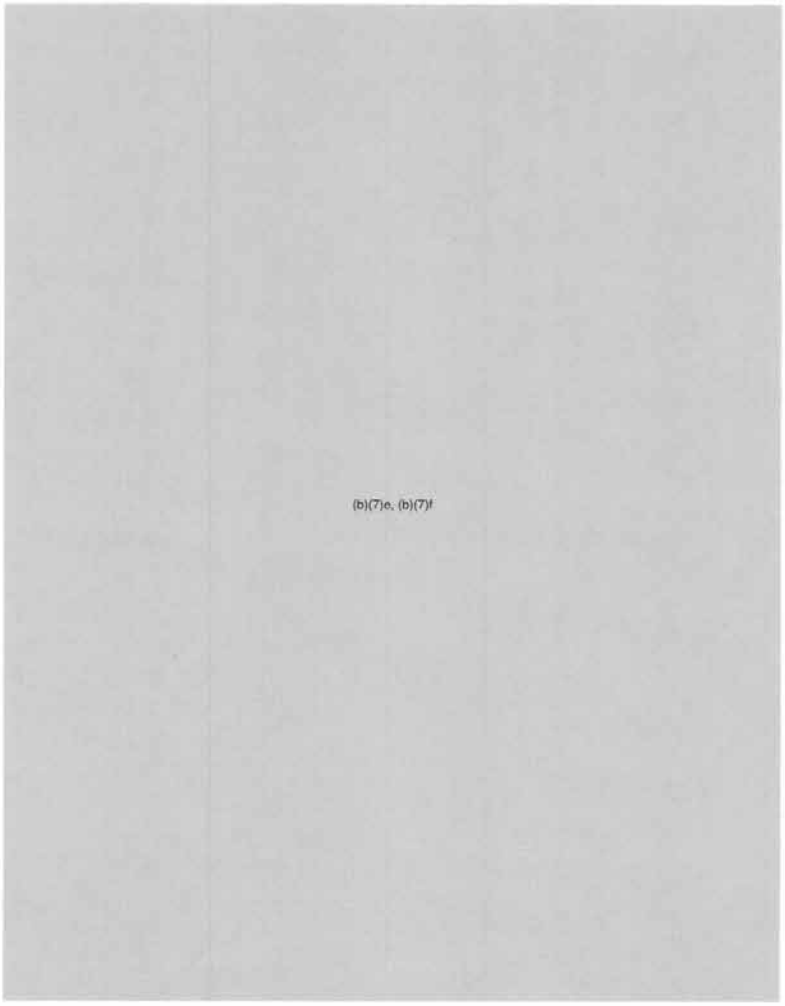
Escort Threat Assessment

For Use When Determining Need For Escorts When Transporting Via Commercial Air Carrier



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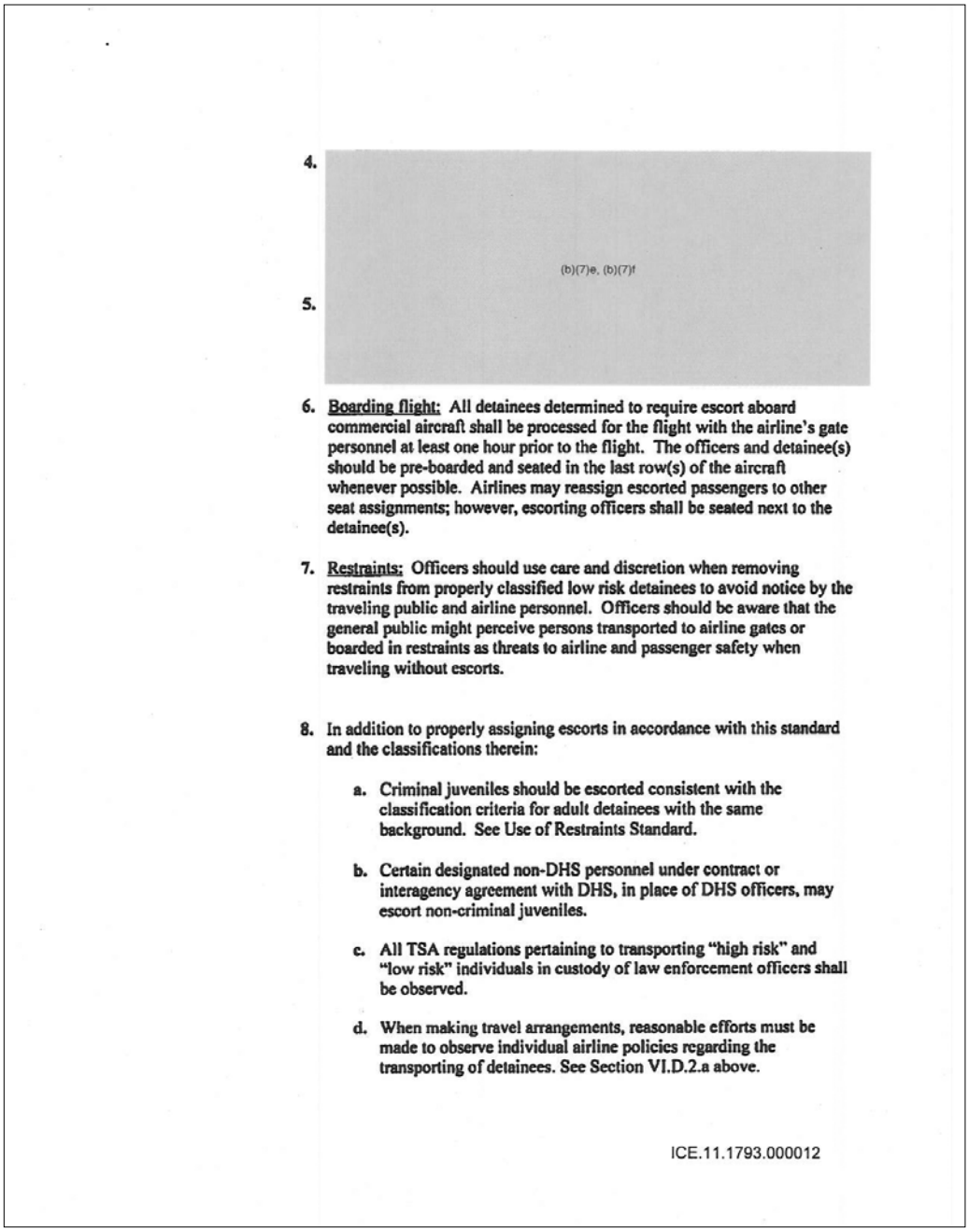
APPENDIX C: ICE ENFORCEMENT STANDARD PERTAINING TO THE ESCORTING OF ALIENS



4. [redacted]

5. (b)(7)e, (b)(7)f

6. Boarding flight: All detainees determined to require escort aboard commercial aircraft shall be processed for the flight with the airline's gate personnel at least one hour prior to the flight. The officers and detainee(s) should be pre-boarded and seated in the last row(s) of the aircraft whenever possible. Airlines may reassign escorted passengers to other seat assignments; however, escorting officers shall be seated next to the detainee(s).

7. Restraints: Officers should use care and discretion when removing restraints from properly classified low risk detainees to avoid notice by the traveling public and airline personnel. Officers should be aware that the general public might perceive persons transported to airline gates or boarded in restraints as threats to airline and passenger safety when traveling without escorts.

8. In addition to properly assigning escorts in accordance with this standard and the classifications therein:

   a. Criminal juveniles should be escorted consistent with the classification criteria for adult detainees with the same background. See Use of Restraints Standard.

   b. Certain designated non-DHS personnel under contract or interagency agreement with DHS, in place of DHS officers, may escort non-criminal juveniles.

   c. All TSA regulations pertaining to transporting "high risk" and "low risk" individuals in custody of law enforcement officers shall be observed.

   d. When making travel arrangements, reasonable efforts must be made to observe individual airline policies regarding the transporting of detainees. See Section VI.D.2.a above.

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9. Food and beverages:

   a. Detainees who require officer escorts shall not be served meals that require metal utensils that could be used as weapons. This information should be conveyed to the carrier when making reservations. Plastic utensils are permissible if the escorting officer determines their composition is such that they do not constitute a threat to the officer's or the public's safety.

   b. Escorted detainees may not consume alcoholic beverages while in the custody of a DHS officer. Likewise, an officer shall not consume alcoholic beverages when escorting detainees nor while carrying a firearm. See DHS Firearms Policy.

10. Notification to airline: Airlines shall be notified of high risk or criminal aliens at the earliest point in the arrangement process. If there are indications of outside intervention on behalf of the detainee, commercial air travel shall not be utilized. Alternate modes of transportation, such as government leased, chartered, or owned aircraft, shall be used.

11. Foreign flights:

   a. To designated country: Except when foreign laws, regulations, or policies countervail, international agreements stipulate otherwise, or prior arrangements have been made to transfer custody of a detainee to foreign officials, restraining devices shall be removed after landing and immediately prior to disembarking in the detainee's designated country of deportation. The individual should be allowed to disembark without restraints.

      In situations where, because of restrictions on their use, restraints must be removed before landing in the detainee's designated country, the responsible supervisor will assure that sufficient officers are assigned to provide for the safety of the officers and the public.

   b. Transiting countries en route: Managers, supervisors, and officers should take appropriate steps to familiarize themselves with the applicable rules, regulations, laws and policies relating to the carriage and use of restraints when escorting persons through other countries en route to the escortee's stipulated country of repatriation. This may require advance notification of both the foreign government and United States officials in the countries anticipated to be transited.

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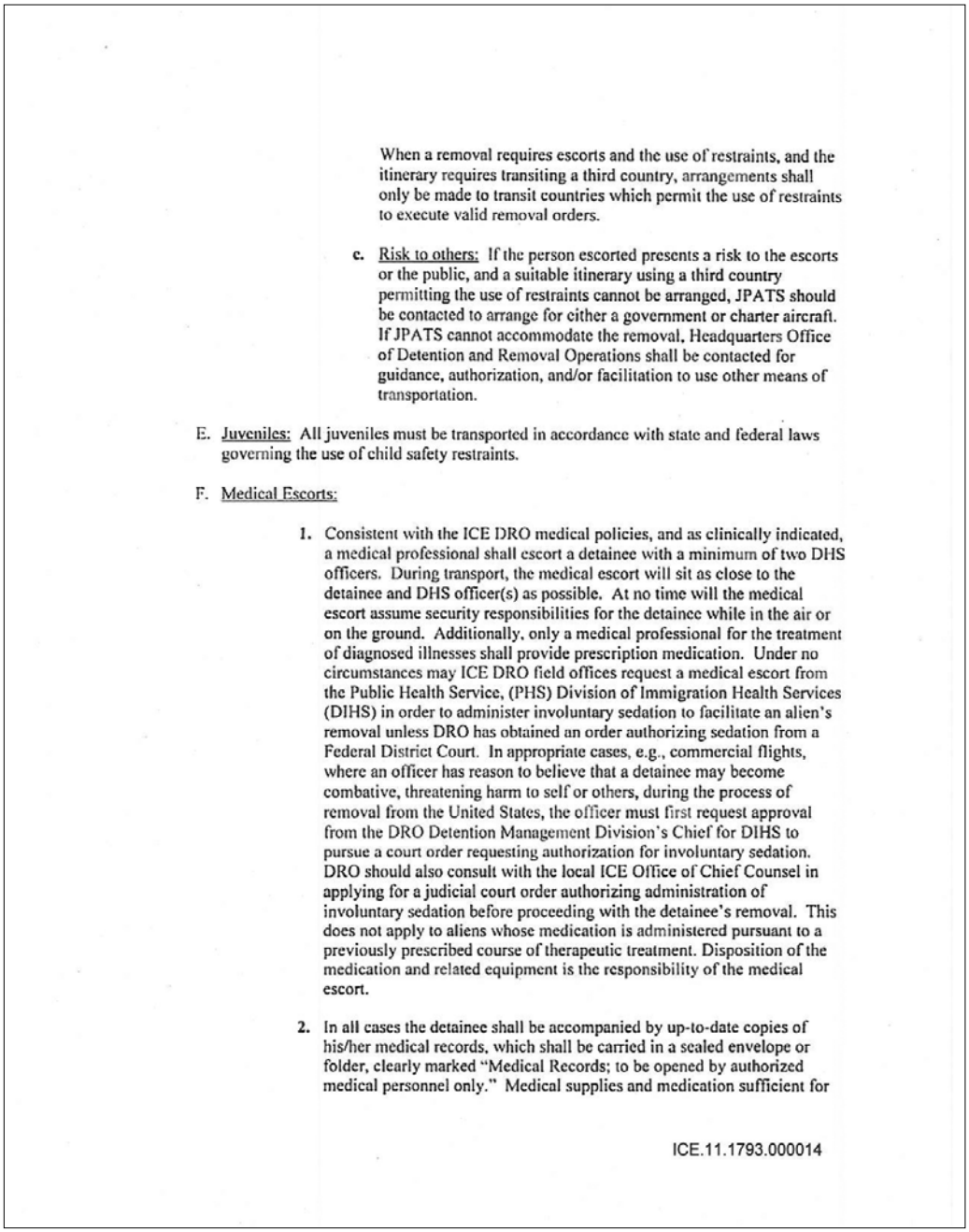
APPENDIX C: ICE ENFORCEMENT STANDARD PERTAINING TO THE ESCORTING OF ALIENS



When a removal requires escorts and the use of restraints, and the itinerary requires transiting a third country, arrangements shall only be made to transit countries which permit the use of restraints to execute valid removal orders.

c. Risk to others: If the person escorted presents a risk to the escorts or the public, and a suitable itinerary using a third country permitting the use of restraints cannot be arranged, JPATS should be contacted to arrange for either a government or charter aircraft. If JPATS cannot accommodate the removal, Headquarters Office of Detention and Removal Operations shall be contacted for guidance, authorization, and/or facilitation to use other means of transportation.

E. Juveniles: All juveniles must be transported in accordance with state and federal laws governing the use of child safety restraints.

F. Medical Escorts:

1. Consistent with the ICE DRO medical policies, and as clinically indicated, a medical professional shall escort a detainee with a minimum of two DHS officers. During transport, the medical escort will sit as close to the detainee and DHS officer(s) as possible. At no time will the medical escort assume security responsibilities for the detainee while in the air or on the ground. Additionally, only a medical professional for the treatment of diagnosed illnesses shall provide prescription medication. Under no circumstances may ICE DRO field offices request a medical escort from the Public Health Service, (PHS) Division of Immigration Health Services (DIHS) in order to administer involuntary sedation to facilitate an alien's removal unless DRO has obtained an order authorizing sedation from a Federal District Court. In appropriate cases, e.g., commercial flights, where an officer has reason to believe that a detainee may become combative, threatening harm to self or others, during the process of removal from the United States, the officer must first request approval from the DRO Detention Management Division's Chief for DIHS to pursue a court order requesting authorization for involuntary sedation. DRO should also consult with the local ICE Office of Chief Counsel in applying for a judicial court order authorizing administration of involuntary sedation before proceeding with the detainee's removal. This does not apply to aliens whose medication is administered pursuant to a previously prescribed course of therapeutic treatment. Disposition of the medication and related equipment is the responsibility of the medical escort.

2. In all cases the detainee shall be accompanied by up-to-date copies of his/her medical records, which shall be carried in a sealed envelope or folder, clearly marked "Medical Records; to be opened by authorized medical personnel only." Medical supplies and medication sufficient for

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the duration of the trip, plus at least three days shall accompany the detainee.

3. Do not transport detainees who have not been medically screened on commercial aircraft. Those transported on JPATS are subject to stipulations found in the JPATS Prisoner Transport Manual.

4. PHS is to be the first and only medical authority contacted when determining the need, and coordinating the efforts, for a medical escort. In the event a determination is made to conduct a medical escort, PHS will provide the "medical professional", either through the use of PHS personnel or contract service provider. Conducting a medical escort without PHS provided services is not authorized.

G. Medical Precautions: Officers should be alert for symptoms such as coughing, fever, sweating and emaciation, in addition to obvious open wounds or bleeding. If an officer suspects that an alien may be infected with a contagious disease, the following precautions should be taken:

1. Transport the alien in a separate vehicle from other aliens.

2. Place a surgical mask on the alien. (PHS authorities have advised that a surgical mask is considered adequate for these purposes. A HEPA mask is not necessary.)

3. Seat the alien in the rear of the vehicle next to an open window if possible, to provide as much ventilation as possible.

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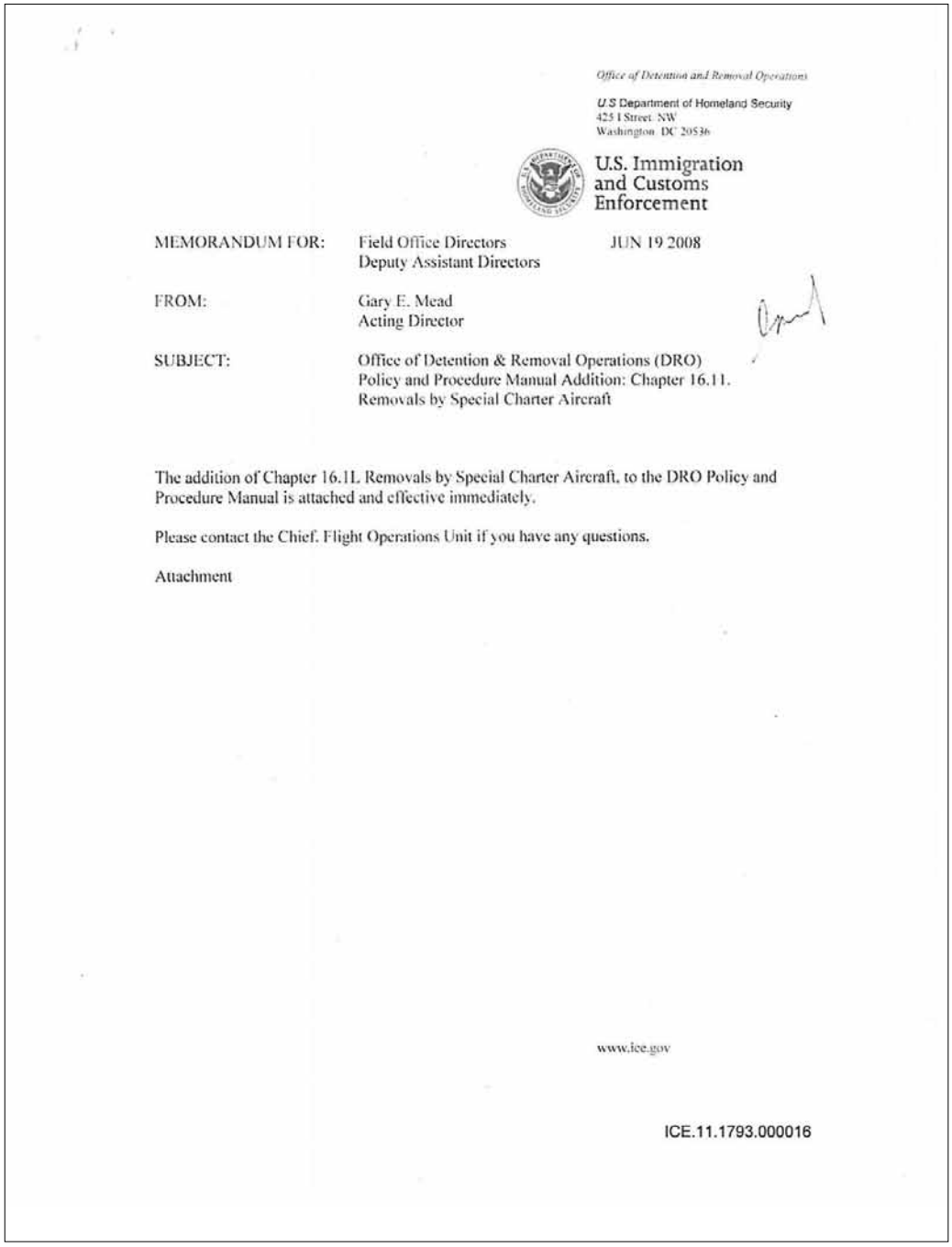
APPENDIX D: ICE REMOVALS BY SPECIAL CHARTER AIRCRAFT



Office of Detention and Removal Operations

U.S Department of Homeland Security
425 I Street NW
Washington DC 20536

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Field Office Directors
Deputy Assistant Directors

JUN 19 2008

FROM: Gary E. Mead
Acting Director

SUBJECT: Office of Detention & Removal Operations (DRO)
Policy and Procedure Manual Addition: Chapter 16.11.
Removals by Special Charter Aircraft

The addition of Chapter 16.1L Removals by Special Charter Aircraft, to the DRO Policy and Procedure Manual is attached and effective immediately.

Please contact the Chief, Flight Operations Unit if you have any questions.

Attachment

www.ice.gov

ICE.11.1793.000016

Chapter 16: Removal Process

References: Federal Travel Regulation Part 301-11.20
ICE Use of Force National Detention Standard
ICE Interim Use of Force Policy

16.11 Removals by Special Charter Aircraft

I. General

The US Immigration and Customs Enforcement (ICE) Office of Detention and Removal Operations (DRO) periodically charters large and small commercial aircraft to remove detainees from the United States. The Removal Management Division (RMD) refers to these flights as special air charters.

While assigned as an Air Operations Officer (AOO) on a special charter, the AOO will work under the direction of the Flight Officer in Charge (FOIC) and Assistant Flight Officer in Charge (AFOIC). Although the AOO's primary mission is detainee escort and removal, the AOO will also assist in aircraft safety during ground or in-flight emergencies.

As an incumbent AOO, you must ensure a calm and uneventful flight. Accordingly, it is important that you treat all persons with courtesy and respect while never compromising aircraft or personnel security.

The special air charter mission begins when DRO escort team members depart for the flight staging location, continues with the safe escort and return of foreign detainees, and terminates upon return of all DRO officers to the final United States destination.

Passage aboard special charter flights is limited to:

- DRO officers performing escort duties;
- Contract flight/cabin crew;
- Medical personnel;
- Contract security officers (CSOs);
- Detainees under final orders of removal or subject to voluntary return;
- Consular officers;
- Other personnel under contract to ICE; and,
- Bona fide members of the media.

The Deputy Assistant Director, Removal Management Division may grant exceptions to this policy.

II. Responsibilities

This policy assigns key responsibilities as follows:

- LAW ENFORCEMENT SENSITIVE -

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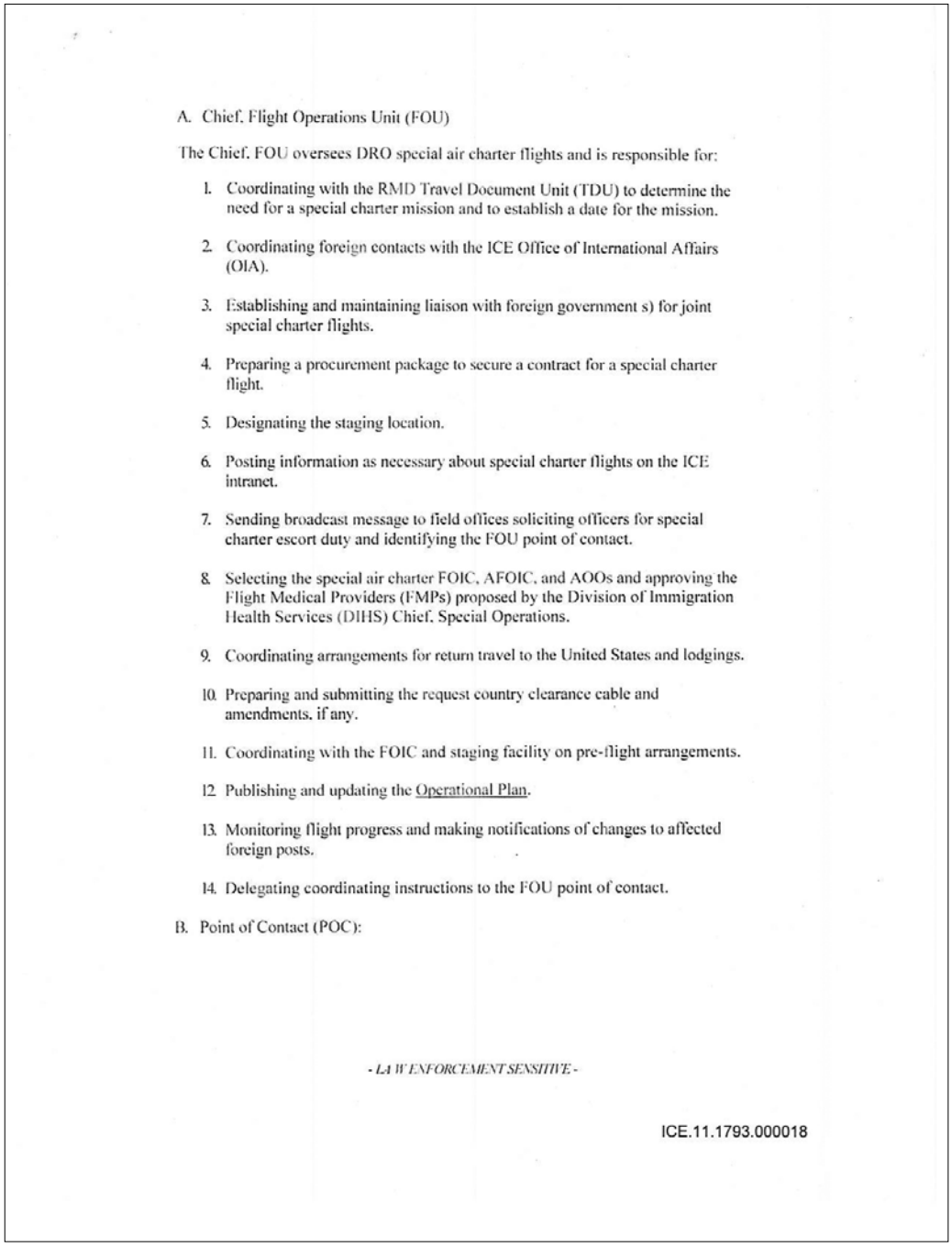
APPENDIX D: ICE REMOVALS BY SPECIAL CHARTER AIRCRAFT



A. Chief, Flight Operations Unit (FOU)

The Chief, FOU oversees DRO special air charter flights and is responsible for:

1. Coordinating with the RMD Travel Document Unit (TDU) to determine the need for a special charter mission and to establish a date for the mission.
2. Coordinating foreign contacts with the ICE Office of International Affairs (OIA).
3. Establishing and maintaining liaison with foreign government s) for joint special charter flights.
4. Preparing a procurement package to secure a contract for a special charter flight.
5. Designating the staging location.
6. Posting information as necessary about special charter flights on the ICE intranet.
7. Sending broadcast message to field offices soliciting officers for special charter escort duty and identifying the FOU point of contact.
8. Selecting the special air charter FOIC, AFOIC, and AOOs and approving the Flight Medical Providers (FMPs) proposed by the Division of Immigration Health Services (DIHS) Chief, Special Operations.
9. Coordinating arrangements for return travel to the United States and lodgings.
10. Preparing and submitting the request country clearance cable and amendments, if any.
11. Coordinating with the FOIC and staging facility on pre-flight arrangements.
12. Publishing and updating the Operational Plan.
13. Monitoring flight progress and making notifications of changes to affected foreign posts.
14. Delegating coordinating instructions to the FOU point of contact.

B. Point of Contact (POC):

- LAW ENFORCEMENT SENSITIVE -

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The POC is the FOU officer who serves as mission coordinator with RMD, TDU, sending and receiving field offices, the ICE Office of Acquisition Management (OAQ), and the OAQ awarded aircraft vendor.

The POC is responsible for providing the FOIC with a satellite or international phone operable in all countries visited during the mission.

The Chief, FOU assigns the POC responsibilities identified in Section A above.

C. Pilot in Command (PIC)

The PIC is a contract position that has primary responsibility for all in-flight safety matters and supervises the contract flight and cabin crews. The PIC should inform the FOIC of deviations from the flight plan and aircraft maintenance problems or concerns that could affect the flight. The FOIC should work with the PIC on matters related to aviation safety and security that affect the DRO law enforcement operation while onboard the contracted aircraft.

D. Flight Officer-in-Charge (FOIC):

The FOIC has overall authority for all safety and security issues on the air charter removal mission, including all ground operations performed within the secure perimeter of the aircraft. All AOOs remain under the supervision of the FOIC for the duration of the mission.

The FOIC is a GS-13 (or above) officer who successfully completed the Air Operations Officer Training Program (AOOTP) and previously served as AFOIC. The Chief, FOU, may waive this requirement on a case-by-case basis.

The FOIC is responsible for:

1. Coordinating detainee documentation, property, currency and medication with
   the staging facility, TDU representative, and Flight Medical Providers (FMP).

2. Confirming all travel and lodging arrangements.

3. Providing AOOs with (b)(7)e, (b)(7)restraints and maintaining accountability for same.

4. Submitting the mission's operational plan to FOU at least 96 hours (4 working
   days) before the charter's scheduled departure.

5. Providing a current detainee manifest (HQ standardized I-216 worksheet Record of Persons and Property Transferred) to the POC immediately before the first take-off and noting any detainee changes.

- LAW ENFORCEMENT SENSITIVE -

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APPENDIX D: ICE REMOVALS BY SPECIAL CHARTER AIRCRAFT

6. Notifying the POC of any personnel substitutions or changes.

7. Delivering the mission briefing to DRO officers, FMPs and Contract Security Officers (CSOs), if assigned.

8. Delivering pre-flight briefings to the AOOs, FMPs, and the contract flight/cabin crews; and reviewing emergency procedures with the contract flight/cabin crew.

9. Designating team leaders (see section III(A)(1)), below for more information on team designation).

10. Establishing AOO and FMP duty schedules.

11. Coordinating and monitoring the activities of contractor security personnel for compliance with all DRO policies and regulations.

12. Boarding and deplaning all detainees and maintaining and accurate head count on all detainees.

13. Enforcing safety measures for all passengers and providing supplemental safety announcements as appropriate.

14. Approving catering prior to each leg of flight and ensuring an adequate supply of food and water.

15. Coordinating meal service and in-flight entertainment with contract flight crew.

16. Maintaining surveillance of detainees for security and signs of medical distress.

17. Referring medical issues to the FMPs.

18. Maintaining accountability for restraints and keys.

19. Notifying the PIC of any incidents that might affect aircraft or passenger safety.

20. Providing en route mission status reports, using a satellite or international phone operable in all countries visited during the mission.

21. Immediately contacting the appropriate United States Embassy officials and POC if anyone requires emergency medical treatment while en route.

22. Maintaining liaison with foreign officials.

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23. Accounting for all DRO officers and FMPs until mission completion.

24. Promoting coordination between the flight crew and law enforcement personnel.

25. Exercising sound judgment and leadership related to the law enforcement mission.

26. Completing all required after action reports.

E. Assistant Flight Officer in Charge (AFOIC)

The AFOIC is a GS-12 officer or above who has successfully completed the AOOTP. The Chief, FOU may waive this requirement on a case by case basis.

The AFOIC performs duties as assigned by the FOIC. In the event of the FOICs incapacitation, the AFOIC assumes the roles and responsibilities of FOIC.

F. Air Operations Officer (AOO)

An AOO is a DRO officer who has successfully completed the AOO Training Program, unless waived by the Chief, FOU, on a case-by-case basis.

The AOO has a general responsibility to maintain security and control of detainees and perform duties as directed by the FOIC and/or AFOIC. While on post, AOOs must remain alert and maintain a clear view of their designated areas of responsibility.

G. Contract Security Officer (CSO)

If assigned to a flight, a CSO will support DRO officers in maintaining security and control of detainees and perform duties as directed by the FOIC and/or AFOIC. The DRO contract specifies CSO qualifications.

H. Flight Medical Officer in Charge (FMOIC); Flight Medical Provider (FMP)

Each special charter flight will have at least one FMP. The DIHS Chief of Special Operations will designate one FMP as the FMOIC who will serve as the health authority for the mission. The FMOIC oversees the other FMPs and communicates all medical issues with the FOIC. The FMOIC has the authority to ground any passengers for medical cause but defers to the FOIC for all operational and safety issues.

III. Procedures

A. Pre-Flight Procedures

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APPENDIX D: ICE REMOVALS BY SPECIAL CHARTER AIRCRAFT

1. Staffing

The duration of the flight, determined by calculating the scheduled time from initial departure to the anticipated arrival time at the final destination, dictates the number of in-flight teams. The FOU will assign a single team to flights with duration of up-to-six hours and two teams for all other flights. The FOIC will use an alternating shift schedule for two-team flights.

a. Large Aircraft

Aircraft with more than 19 seats fall into the DRO category of "large aircraft." Flights using large aircraft will usually have a ratio of (b)(7)e, (b)(7)f officers to (b)(7)e, (b)(7)f detainees for each in-flight team. Minimum staffing for a large aircraft with one team includes (b)(7)e, (b)(7)f (b)(7)e, (b)(7)f Flights carrying more than 150 detainees will include additional FMPs at a ratio of (b)(7)e, (b)(7)f (b)(7)e, (b)(7)f The DIHS Chief of Special Operations may adjust the number of FMPs subject to FOU concurrence. The normal number of FMPs is (b)(7)e, (b)(7)f per large aircraft.

b. Small Aircraft

Aircraft with up to 19 seats fall into the DRO category of "small aircraft." Small aircraft will usually have a ratio of (b)(7)e, (b)(7)f officers to (b)(7)e, (b)(7)f detainees. The minimum staffing for small aircraft includes (b)(7)e, (b)(7)f (b)(7)e, (b)(7)f The normal number of FMPs is (b)(7)e, (b)(7)f per small aircraft.

2. AOO Dress Code

The AOO must dress neatly and professionally, conforming to standards indicated below. The FOIC maintains discretion over the dress code. This means that the FOIC may require AOOs to change unacceptable attire before departure as a condition of participation.

The AOO may wear:

- Jeans, slacks, or solid-colored cargo pants;
- Collared shirts; and,
- Closed-toe comfortable shoes, including tennis shoes or boots.

The AOO may not wear:

- Tattered or torn clothing;
- Shirts with law enforcement insignia;

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- Shirts with inappropriate slogans, messages, letters, or emblems;
- Tank tops or other sleeveless shirts;
- Low-cut tops;
- Skirts;
- Sandals, open-toed shoes or high-heeled shoes;
- Hats or caps on the flight line (tarmac); and,
- Jewelry that poses a risk (grabbing or pulling hazards).

3. Personal Documentation and Equipment

All AOOs will report for duty with the following items:

- Official Passport (valid for the next 6 months) with visas as required;
- Official Government Credentials;
- Restraint keys;
- Gloves appropriate for searching detainees and aircraft; and,
- Record of immunizations (if required).

4. Prohibited Items

The following items are prohibited on special charter flights:

- Firearms;
- Ammunition;
- Knives;
- Chemical agents (OC spray);
- Multipurpose tools;
- Expandable or other batons; and,
- Clothing with law enforcement or organizational insignia or emblem.

5. AOO Reporting and Leave

All AOOs will report to the staging location one day prior to scheduled charter departure, unless otherwise instructed and/or approved by the FOIC.

If the AOO would like to take leave in conjunction with the mission, he/she must provide copies of the approved leave request to the POC and FOIC prior to the request for country clearance (typically 7 to 14 days prior to the scheduled flight departure).

6. Staging Advance Team

As directed by the FOIC, the special charter staging advance team will travel to the staging location to assist with pre-flight preparation. The advance team will generally consist of:

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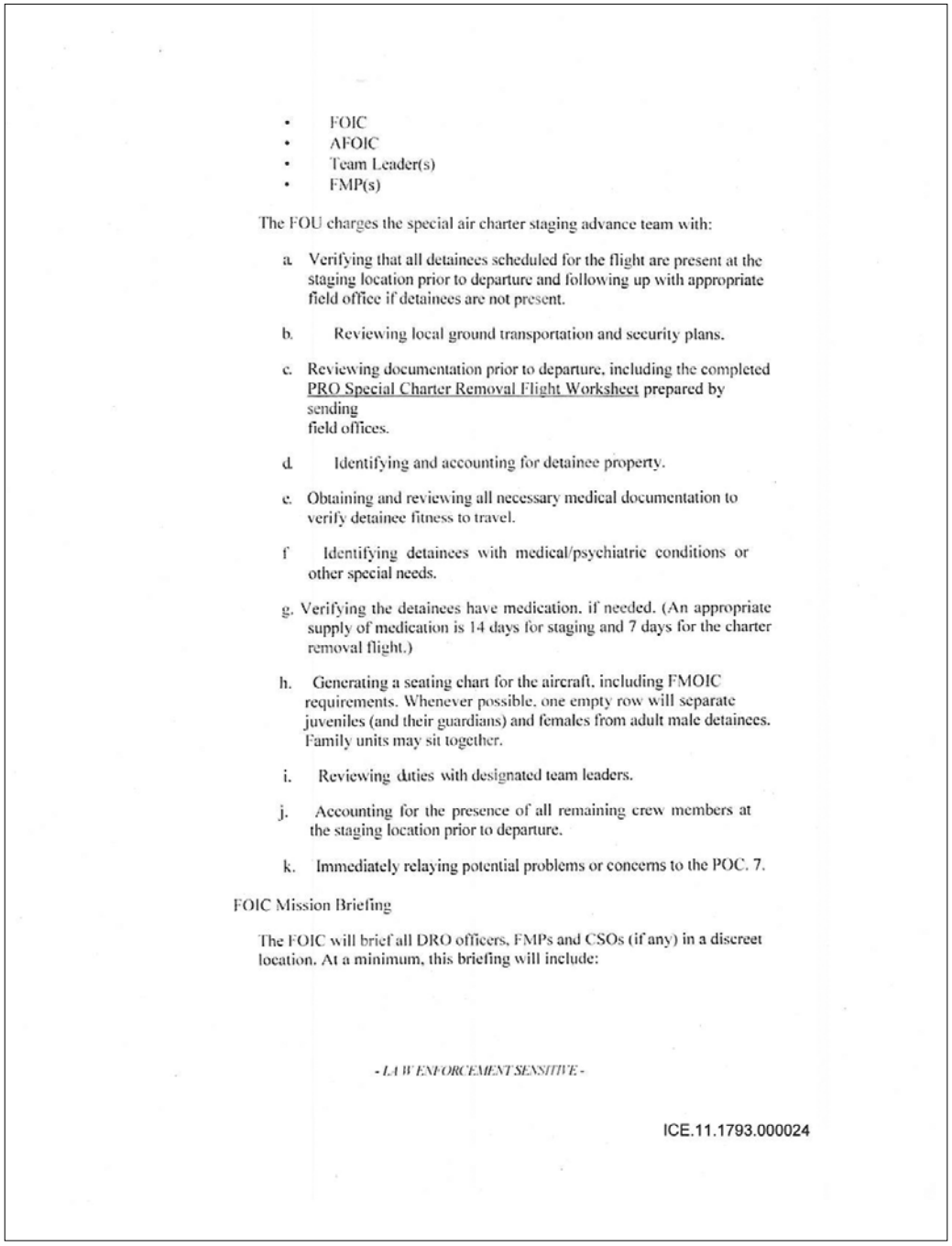
APPENDIX D: ICE REMOVALS BY SPECIAL CHARTER AIRCRAFT



- FOIC
- AFOIC
- Team Leader(s)
- FMP(s)

The FOU charges the special air charter staging advance team with:

a. Verifying that all detainees scheduled for the flight are present at the staging location prior to departure and following up with appropriate field office if detainees are not present.

b. Reviewing local ground transportation and security plans.

c. Reviewing documentation prior to departure, including the completed PRO Special Charter Removal Flight Worksheet prepared by sending field offices.

d. Identifying and accounting for detainee property.

e. Obtaining and reviewing all necessary medical documentation to verify detainee fitness to travel.

f Identifying detainees with medical/psychiatric conditions or other special needs.

g. Verifying the detainees have medication, if needed. (An appropriate supply of medication is 14 days for staging and 7 days for the charter removal flight.)

h. Generating a seating chart for the aircraft, including FMOIC requirements. Whenever possible, one empty row will separate juveniles (and their guardians) and females from adult male detainees. Family units may sit together.

i. Reviewing duties with designated team leaders.

j. Accounting for the presence of all remaining crew members at the staging location prior to departure.

k. Immediately relaying potential problems or concerns to the POC. 7.

FOIC Mission Briefing

The FOIC will brief all DRO officers, FMPs and CSOs (if any) in a discreet location. At a minimum, this briefing will include:

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- Introductions;
- Handouts of the operational plan, detainee manifest, seating chart, country clearances, and hotel confirmation numbers (Note: OPSEC Sensitive);
- Detailed review of the operational plan;
- Review of policy and procedures stated in this document;
- Review of seating chart and boarding plan;
- Review of aircraft layout, including location of restrooms and emergency equipment;
- Announcement of team leader(s) and assignments;
- Introduction of FMOIC (medical briefing);
- Discussion of relevant security and cultural issues pertaining to countries visited during the mission (from the country clearance notification and the State Department at http://travel.state.gov);
- Address special notes on "behavior becoming of officers" representing the United States government while traveling overseas;
- Discussion of local transportation plan, including return of rental cars; and,
- Reminder to maintain professionalism with detainees.

8. Pre-Departure Briefing

The FOIC or contract flight/cabin crew representative will provide a safety briefing that will include aircraft emergency procedures.

At this brief, the FOIC will remind the contract flight/cabin crew that the flight/cabin crew will not interact directly with detainees during the flight except in an emergency nor with foreign government officials meeting the aircraft.

9. Contraband Search

Before detainees board the aircraft, the FOIC will assign personnel to search both the aircraft and the detainees for contraband. Law enforcement

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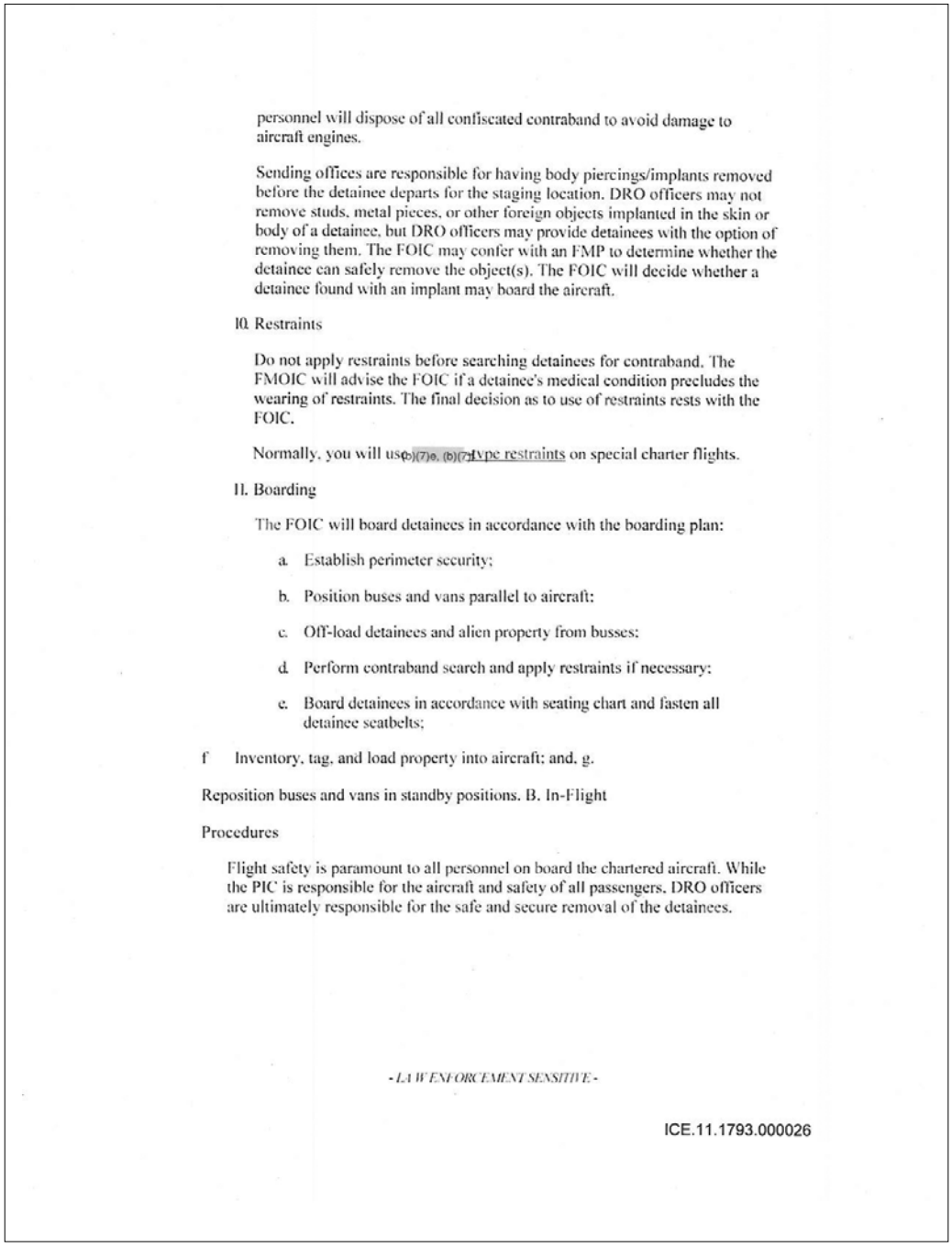

personnel will dispose of all confiscated contraband to avoid damage to aircraft engines.

Sending offices are responsible for having body piercings/implants removed before the detainee departs for the staging location. DRO officers may not remove studs, metal pieces, or other foreign objects implanted in the skin or body of a detainee, but DRO officers may provide detainees with the option of removing them. The FOIC may confer with an FMP to determine whether the detainee can safely remove the object(s). The FOIC will decide whether a detainee found with an implant may board the aircraft.

10. Restraints

Do not apply restraints before searching detainees for contraband. The FMOIC will advise the FOIC if a detainee's medical condition precludes the wearing of restraints. The final decision as to use of restraints rests with the FOIC.

Normally, you will use (b)(7)e, (b)(7)f type restraints on special charter flights.

11. Boarding

The FOIC will board detainees in accordance with the boarding plan:

a. Establish perimeter security;

b. Position buses and vans parallel to aircraft;

c. Off-load detainees and alien property from busses;

d. Perform contraband search and apply restraints if necessary;

e. Board detainees in accordance with seating chart and fasten all detainee seatbelts;

f Inventory, tag, and load property into aircraft; and, g.

Reposition buses and vans in standby positions. B. In-Flight

Procedures

Flight safety is paramount to all personnel on board the chartered aircraft. While the PIC is responsible for the aircraft and safety of all passengers, DRO officers are ultimately responsible for the safe and secure removal of the detainees.

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Detainees will remain seated with seat belts and restraints securely fastened unless otherwise directed.

Female detainees will be escorted to the lavatory by female escorts.

1. Food and Beverage Service

Although the contract flight/cabin crew may assist with preparation of food and beverages, they may not interact directly with the detainees. DRO officers will deliver all food and beverages to the detainees and conduct associated cleanup.

DRO officers will not provide detainees with items that could pose a safety or security threat, such as knives, aluminum foil or trays, condiments, chewing gum, and toothpicks. Detainees may not receive hot beverages.

2. Lavatory Use

a. Suspend lavatory use during food service to preclude crowding in the aisles.

b. Do not allow the detainee to leave his/her seat until you have verified that a lavatory is vacant.

c. Never allow a detainee to walk unescorted to a lavatory.

d. Check the lavatory for contraband or damage before and after use.

e. Use discretion when determining the level of observation required on detainees while in the lavatory.

f Use discretion when deciding whether to partially release restraints for lavatory use.

g. From the outside, place the door latch in the locked position, before allowing the detainee into the lavatory; the locked latch precludes the door from fully closing.

h. Stand just outside the lavatory doorway in a position to observe the detainee.

3. Detainee Disturbances

The confined spaces of an aircraft create unique conditions that law enforcement personnel must consider when quelling any disturbances.

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APPENDIX D: ICE REMOVALS BY SPECIAL CHARTER AIRCRAFT

The FOIC should not personally respond to disturbances, but will remain in a position to safely observe and direct the response. The FOIC directs the scope of the response to onboard disturbances and maintains the security of the flight deck. The AOOs will prevent the disturbance from escalating by separating the detainee(s) from the group. If the disturbance is significant, the FOIC will notify the PIC.

DRO officers and FMPs will follow procedures provided in the Use of Force National Detention Standard and the Interim ICE Use of Force Policy.

- In the case of a disturbance, notify the FOIC and/or the AFOIC.
- Remain at post unless otherwise directed by the FOIC or the AFOIC even in cases of detainee disturbances in other areas of the aircraft.
- If a disturbance occurs in your section, make every effort to control the situation. Request assistance if required.
- Use a protective mask (spit mask) to cover the mouth of a disruptive detainee to prevent biting, spitting, etc.
- Remain vigilant, maintain contact, and respond to instructions from the FOIC/AFOIC.

4. Emergencies

With (b)(7)e, (b)(7)f type restraints, the detainees can don their own oxygen masks unassisted. The contract flight/cabin crew will have briefed all passengers on the use of the emergency equipment prior to departure.

Do not remove detainee restraints without approval from the FOIC. The FOIC determines whether and when AOOs can remove restraints during emergencies.

Do not obstruct emergency exits and doors during any portion of the flight.

5. Evacuation

When an emergency occurs, the PIC decides whether an evacuation is required. If time permits, the contract flight/cabin crew will coordinate with the FOIC who will then decide whether to remove restraints. As a rule, AOOs will remove restraints prior to a water landing ("ditching") but not before other emergency landings.

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Time permitting, the FOIC will assist the contract flight/cabin crew in preparing for the evacuation, i.e., preparing passengers, readying the cabin, and planning the evacuation routes for the detainees.

AOOs will not open aircraft doors but, if requested, can open over the wing exits, upon direction of the lead flight crew/attendants. This emergency evacuation procedure applies to both over land and water evacuations.

When the AOOs complete all preparations for the emergency landing, the FOIC will notify the contract flight/cabin crew that the passenger compartment is secure and ready for landing.

- Before deplaning, AOOs should check the plane for remaining passengers. The FOIC should deplane with a copy of the passenger manifest to assist in accounting for all passengers.
- For land evacuations, AOOs should immediately establish a security perimeter and contain detainees at a safe location.
- For water evacuations, AOOs should marshal the detainees to prepare for rescue and prevent escapes. The AOOS should maintain visual accountability of all passengers to the extent possible.

6. Escapes

The nearest ICE office has initial jurisdiction over an escape or attempted escape. That local office will coordinate initial response and investigation. The FOIC retains responsibility for maintaining security of the aircraft and detainees. In the case of an escape, the FOIC will immediately contact the nearest law enforcement agency and the POC with essential details. (See memorandum Standard Operating Procedure, Escapes and Releases, dated December 11, 2006 for more information on escapes.)

C. Post-Flight Procedures

Upon arrival at a foreign destination, the FOIC will be the first person to initiate contact with foreign government officials. Other officers will remain at post unless otherwise directed by the FOIC. The FOIC will direct the deplaning of detainees and unloading of property.

The FMOIC provides the receiving government official with required medical documentation and detainee medications, unless directed to release medications to

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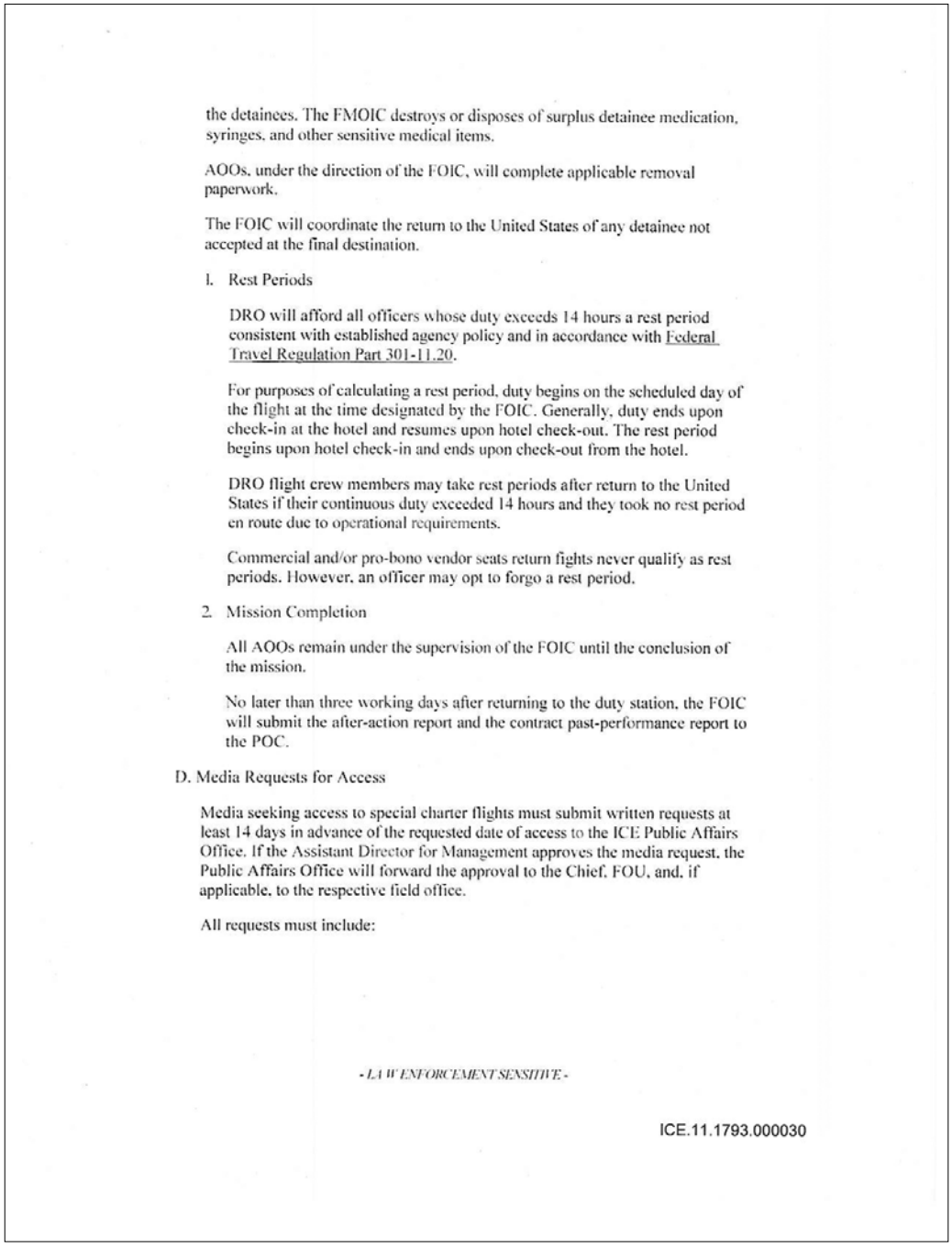
APPENDIX D: ICE REMOVALS BY SPECIAL CHARTER AIRCRAFT



the detainees. The FMOIC destroys or disposes of surplus detainee medication, syringes, and other sensitive medical items.

AOOs, under the direction of the FOIC, will complete applicable removal paperwork.

The FOIC will coordinate the return to the United States of any detainee not accepted at the final destination.

1. Rest Periods

DRO will afford all officers whose duty exceeds 14 hours a rest period consistent with established agency policy and in accordance with Federal Travel Regulation Part 301-11.20.

For purposes of calculating a rest period, duty begins on the scheduled day of the flight at the time designated by the FOIC. Generally, duty ends upon check-in at the hotel and resumes upon hotel check-out. The rest period begins upon hotel check-in and ends upon check-out from the hotel.

DRO flight crew members may take rest periods after return to the United States if their continuous duty exceeded 14 hours and they took no rest period en route due to operational requirements.

Commercial and/or pro-bono vendor seats return fights never qualify as rest periods. However, an officer may opt to forgo a rest period.

2. Mission Completion

All AOOs remain under the supervision of the FOIC until the conclusion of the mission.

No later than three working days after returning to the duty station, the FOIC will submit the after-action report and the contract past-performance report to the POC.

D. Media Requests for Access

Media seeking access to special charter flights must submit written requests at least 14 days in advance of the requested date of access to the ICE Public Affairs Office. If the Assistant Director for Management approves the media request, the Public Affairs Office will forward the approval to the Chief, FOU, and, if applicable, to the respective field office.

All requests must include:

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- Source and purpose of request:
- Date, location, and duration of the media event;
- List of equipment to bring on board the aircraft;
- The name, date and place of birth, and social security number for each individual requesting access;
- Passport/visa information for all participating media personnel traveling to a foreign destination. non United States citizen media personnel traveling abroad and returning on the same aircraft are responsible for having in their possession appropriate documents required for re-entry into the United States;
- A signed ICE Hold Harmless Agreement; and,
- Any other information required by Headquarters DRO.

Media representatives are responsible for securing all required visas.

Only the DRO Assistant Director for Management may authorize exceptions to the above procedures. If media representatives do not follow these procedures are and/or secure these approvals, the FOIC will deny media representatives access to the special charter flight.

The ICE Public Affairs Office will maintain the original Hold Harmless Agreement and forward a copy to the Chief, FOU.

E. Media representatives must not infringe upon the safety and security of the flight or its operations. Media representatives will conduct interviews only as permitted by the FOIC and may videotape or photograph detainees only after both the detainee signs and the witnessing DRO officer signs the Detainee Interview Release Form. Under no circumstances will the media representative photograph, videotape, or publish the tail number or any other identifying characteristics of the aircraft.

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APPENDIX E: ICE FLIGHT OPERATIONS UNIT CONTINUITY BOOK

FOU Continuity Book

Medical Cases:

Psychological Issues

Those cases requiring psychological care should be identified on the I-216 AS "Special Handling" cases in the "*Afflicted/Dangerous*" column. FOU Kansas City must be made aware of these cases so that proper notification and arrangements can be made to receiving countries. detainees who are taking prescribed psychotropic medications must be transferred with their medication and sufficient documentation to allow proper monitoring and treatment of their *conditions*. Detainees on active suicide watch will be refused boarding unless prior approval has been obtained from the Flight Nurse or the Flight Officer in Charge.

Pregnant Detainees: Pregnant detainees who are in the first two trimesters of pregnancy may travel via JPATS providing there have been no complications with the pregnancy. Those individuals in their third trimester may travel only if the detainee has a written statement from an ICE-contracted physician or PHS official authorizing travel by aircraft

and the alien is not experiencing any medical problems at the time of boarding. The statement must be dated within 72 hours of the scheduled movement.

Tuberculosis (TB) Screening/Testing: Detainees presented for boarding on a ICE/JPATS aircraft must have a full TB screening documented in USM Form 533 or ICE equivalent. All standard ICE policy and procedure will be followed as applicable. In accordance with the ICE National Standards (Referencing the *Detention Operations Manual* "Medical Care" and "Detainee Transfers" sections located at:

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httm://www.ice.gov/partners/dro/opsmanual/index.htm) aliens/detainees will be screened for TB by a tuberculin skin test (PPD) or chest X-ray (CXR) upon admission to all ICE

Detention Centers, all ICE Contract Detention Facilities (CDF's), and all Intergovernmental Service Agreements facilities (IGSAs – state or local government facilities that hold ICE aliens/detainees for grater that 72 hours). Results must be documented on USM-553 or equivalent. DRO detainee(s) whom have not been processed and/or newly arrested detainees might not have completed TB screening; therefore, a USM-553 might not be available. Detainees who have *been screened* by PPD or CXR must have results documented on USM-553. The Flight Nurse will check for evidence of a positive PPD on those whom *have* had skin tests placed but not yet evaluated; and will symptom screen those whom have not had the screening process initiated. Detainees with a positive PPD skin test will be required to have a normal CXR for clearance to fly. Those with a positive (abnormal) CXR will be required to have three separate negative AFB Smear (sputa) reports for clearance to fly. Any Alien/Detainee who fails

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to pass symptom screening by a Flight Nurse will be declined boarding and be referred back to the originating facility for further medical evaluation.

The Flight Nurse will be the primary individual to determine suitability of detainee's health status to board an ICE/ JPATS aircraft; discrepancies are to be discusses with the Aero-Medical Branch Chief or designee. Policies, procedures, and directives are subject to review and revision to ensure applicability of current national guidelines, standards of care, and mission needs.

Prescription Medication: *Any detainee needing prescribed medication will be medicated prior to acceptance by Flight Nurse or the FOIC.* Prescribed medication must be delivered to the Flight Nurse. Detainees requesting medication must have at least a 7-day supply in appropriate dosages prior to boarding. When possible, carded medications should be stapled with the form USM-533 medical form, and I-216. Detainees are permitted two respiratory inhalers and one bottle of nitroglycerin tablets on their person.

Narcotics and Controlled Substances: The Flight Nurse will account for and secure all Drug Enforcement Agency (DEA) Schedule II, III, and IV drugs in his/her custody. Change of custody of narcotics and controlled substances requires a written transfer as follows.

The Flight Nurse and the officer delivering the detainees to the airlift will note the amount of the transferred dosage on form USM-533, (Section II- Medication Required for Care En Route). Information included will be the name of the detainee, alien number, name and dosage of the drug, and the quantity of the drug transferred to the custody of the Flight Nurse.

The Flight Nurse will document any drugs administered during flight on the medical form.

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The Flight Nurse and the receiving officer will count the number or quantity of each controlled substance being transferred and will document the amount on the USM-533

form upon arrival of the detainee at the final destination. Both the Flight Nurse and the receiving officer will print and sign their names on the USM-533 or ICE equivalent form.

The Flight nurse (or the FOIC on flights without a Flight Nurse) will retain the original copy of the finalized form. Giving one copy to the delivering officer, and one copy to the receiving officer.

Special Medical Treatment: Detainees requiring special medical treatment (self-catheter, colostomy care) will not be boarded unless the detainee can perform the necessary care or treatment on himself/herself, and the necessary equipment is intact and accompanies the detainee.

Decreased Mobility: Detainees who are unable to board the aircraft under their own power will not be boarded on the aircraft for safety without advance authorization of one of the following, the HQ Division Immigration Health Services; the Chief, Aero-Medical Branch "Special Operations; the Flight Nurse, or the ICE FOIC. Transport chairs are available for detainees with

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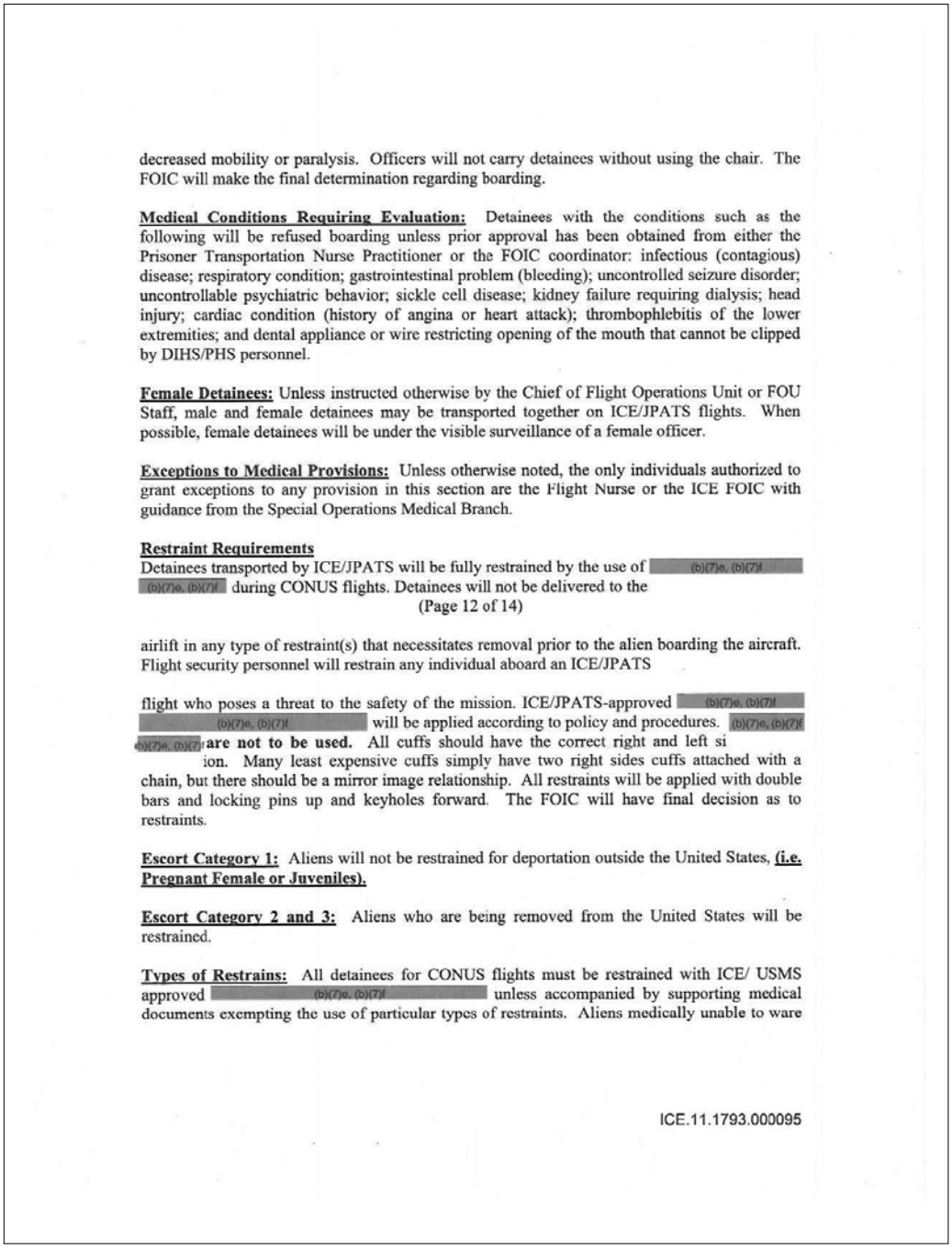
APPENDIX E: ICE FLIGHT OPERATIONS UNIT CONTINUITY BOOK



decreased mobility or paralysis. Officers will not carry detainees without using the chair. The FOIC will make the final determination regarding boarding.

Medical Conditions Requiring Evaluation: Detainees with the conditions such as the following will be refused boarding unless prior approval has been obtained from either the Prisoner Transportation Nurse Practitioner or the FOIC coordinator: infectious (contagious) disease; respiratory condition; gastrointestinal problem (bleeding); uncontrolled seizure disorder; uncontrollable psychiatric behavior; sickle cell disease; kidney failure requiring dialysis; head injury; cardiac condition (history of angina or heart attack); thrombophlebitis of the lower extremities; and dental appliance or wire restricting opening of the mouth that cannot be clipped by DIHS/PHS personnel.

Female Detainees: Unless instructed otherwise by the Chief of Flight Operations Unit or FOU Staff, male and female detainees may be transported together on ICE/JPATS flights. When possible, female detainees will be under the visible surveillance of a female officer.

Exceptions to Medical Provisions: Unless otherwise noted, the only individuals authorized to grant exceptions to any provision in this section are the Flight Nurse or the ICE FOIC with guidance from the Special Operations Medical Branch.

Restraint Requirements
Detainees transported by ICE/JPATS will be fully restrained by the use of (b)(7)e, (b)(7)f (b)(7)e, (b)(7)f during CONUS flights. Detainees will not be delivered to the

(Page 12 of 14)

airlift in any type of restraint(s) that necessitates removal prior to the alien boarding the aircraft. Flight security personnel will restrain any individual aboard an ICE/JPATS

flight who poses a threat to the safety of the mission. ICE/JPATS-approved (b)(7)e, (b)(7)f (b)(7)e, (b)(7)f will be applied according to policy and procedures. (b)(7)e, (b)(7)f (b)(7)e, (b)(7)f **are not to be used.** All cuffs should have the correct right and left si ion. Many least expensive cuffs simply have two right sides cuffs attached with a chain, but there should be a mirror image relationship. All restraints will be applied with double bars and locking pins up and keyholes forward. The FOIC will have final decision as to restraints.

Escort Category 1: Aliens will not be restrained for deportation outside the United States, **(i.e. Pregnant Female or Juveniles).**

Escort Category 2 and 3: Aliens who are being removed from the United States will be restrained.

Types of Restrains: All detainees for CONUS flights must be restrained with ICE/ USMS approved (b)(7)e, (b)(7)f unless accompanied by supporting medical documents exempting the use of particular types of restraints. Aliens medically unable to ware

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hand/leg restraints will require approval by DIHS/PHS medical personnel and the FOIC prior to boarding.

Exchanging Restraints: Delivering ICE Field Offices will exchange restraints on a one-for-one basis during the alien exchange process. Crewmembers are not authorized to exchange working restraints for damaged or defective restrains.

Application of Restrains: Connect handcuffs to the waist chain in a manner that restricts the alien's ability to touch his/her chin while standing erect, but so that he/she can accomplish such tasks as eating and using the lavatory. Detainees whose wrists are too large to permit the use of standard handcuffs may be restrained with (b)(7)e, (b)(7)f (b)(7)e, (b)(7)f Detainees wearing a cast or brace on their arm may be restrained by securing (b)(7)e, (b)(7)f (b)(7)e, (b)(7)f Restrain the uninjured arm properly with handcuffs.

Waist chains are not to be passed through the belt loops on detainee clothing as it inhibits the use of the lavatory on aircraft. For this reason, detainees wearing jumpsuits is discouraged. A (b)(7)e, (b)(7)f will be applied to detainees identified as extremely dangerous or escape risks on the manifest. Leg irons will not be inserted through bootstraps or over the boots; boots will be turned down to enable leg irons to be properly applied around the detainee's leg. The FOIC will determine the proper application of restraints in the cases of a detainee whose legs are too large to

(Page 13 of 14)

permit the use of leg irons, and who do not have documented medical exceptions for leg irons.

Removal of Restrains: Restraints will not be removed for any reason unless approved by the FOIC or AFOIC.

Special Restrains: The FOIC has the authority to authorize the type of restraints used on detainee with special needs such as (b)(7)e, (b)(7)f.

Meals

Ready to Eat Meals provided by ICE will include one sandwich, one granola bar (or Acceptable substitute), and one juice package or bottled water. Fruit or condiments (mustard, ketchup, and mayonnaise, etc.) are not allowed.

Detainee Meals and Incidentals: Designated ICE officer meeting the aircraft will provide detainee meals as indicated on the official flight manifest. This should include food items, diapers for infants/toddlers, and sanitary supplies for females.

Property

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APPENDIX E: ICE FLIGHT OPERATIONS UNIT CONTINUITY BOOK

Detainee Property and Money: If applicable, property not permitted on the body of a detainee for boarding purposes may be sealed with their other property. All excess alien property must be shipped by ICE/DRO in property boxes tagged with an I-77. Property information must also be listed on the I-216.

Confiscated and Refused Property: Property refused by the FOIC will be returned to the delivering agency at the airlift detainee exchange location or disposition/forwarding. Any item the FOIC determines could be used as a possible weapon will be taken from the alien and returned to the delivering ICE official for disposition.

Discrepancies: All discrepancies regarding the contents of the transported sealed detainee property container/box will be resolved between the sending and receiving ICE office.

Detainee Money: Cash is the accepted vehicle for money transfer to foreign soil; however, checks may also be allowed in special circumstances. The sending office must coordinate such cases with the FOU in Kansas City. The detainee's alien number must be on any check.

Emergency Movements:

Emergency air movements will be based on unforeseen circumstances such as disturbances and/or riots in ICE/DRO facilities, urgent evacuations due to natural

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